The Economics of the 1999 Nigerian Constitution

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Constitution is in the serious business of good governance, including economic development. It is, therefore, dangerous and downright careless to leave it in the hands of only politicians.

The 1999 constitution is as a major economic document. It is a must read by all stakeholders in the management of the Nigerian economy. I would like the introduction of a course to be titled ‘Economics of the Nigerian constitution.’ Some provisions of the Constitution will make the case for such a course. What follows is the discussion of these provisions.

1999 Nigerian Constitution as an Economic Document

The general provisions in chapter I of the 1999 Constitution lay the foundation for this address. Sections 1-6 emphasize the supremacy of the Constitution; define the federating units as federal and states; and the functions and powers of the units.

By these provisions the administration of each of the federating units is structured into - the Legislative, Executive and Judiciary. The implementation of this structure is of interest to us as economists because of the financial implications. We shall return to this shortly.

The constitution recognizes the need for economic planning at the grass-root. Section 7 (3) says:

‘It shall be the duty of a local government council...to participate in the economic planning and development of the area.....and to this end an economic planning board shall be established by a law enacted by the House of Assembly’

This, no doubt, is a very important provision which is largely ignored by most states, even when the Constitution makes it mandatory. Part of the mandate of National Planning Commission is to assist both states and LGAs in setting up and strengthening their economic planning units. This mandate needs to be renewed and given effect, particularly with respect to LGAs.

The Nigerian Economic Society (NES) also has a major role to play in the area of advocacy and capacity building, particularly at the LGA level. Proper budgeting and planning are alien to LGAs, despite the constitutional directive. NES should liaise with state Assemblies to ensure compliance with the constitutional provisions on planning Boards and offer capacity training to the LGAs in setting-up the Boards.
The Economics of the 1999 Nigerian Constitution

Chapter II of the Constitution, Fundamental Objectives and Directive Principles of the State Policy are the most sacred provisions in the 1999 Constitution because they set the minimum standards of behaviour for all economic agents participating in the Nigerian economy including, the government, private sector, and individuals. These provisions should, therefore, be of particular interest to all economic planners, policy makers, analysts, teachers and students of economics. According to Section 13 of this all important chapter:

“It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this Constitution”

The provisions of the Constitution in chapter II are very fundamental and indeed very crucial to Nigeria’s socio-economic development and yet they are bridged more in default than in observance because they have not been made justice-able. That’s why, for instance, employers of labour including, government and the private companies can afford not to pay workers salaries/wages for months with no consequences; that is why, such a high proportion of able bodied- Nigerians is left unemployed and yet government cannot be bothered; that is why, the political class can brazenly appropriate to itself so much of our corporate resources and nothing, I mean nothing happens to them.

The provisions contained in chapter II and in particular, Sections 14-17 to make the case for the importance of the 1999 Constitution as an economic document deserving serious attention and study by all interested in the efficient management of the Nigerian economy. Section 14(3) provides directives on federal/state character.

It stipulates that the composition of the federal or state governments or their agencies and the conduct of their affairs must be carried out in such manner as to reflect the federal/state character. While the intention of this provision is good, we, nevertheless, note the financial implications of the implementation of the provisions at both levels of government.

Section 15(15) abolishes corrupt practices and abuse of power. This addresses the cost; general efficiency; and moral code of governance.

Sections 16-18,23 provide directives on economic management including, the respective roles of government, private firms and individuals in the production of goods and services, resource exploitation, labour relations, upholding the dignity of labour, social justice, equal access to education, promotion of science and technology. Section 16 in particular spells out the economic ideology to be pursued by government, any government irrespective of party affiliation. That is:

to...........” promote National prosperity and an efficient, dynamic and self-reliant economy”; And, in this respect:
manage the National economy on the basis of social justice and equity of status and opportunity.

The Constitution makes provisions for a mixed economy while government to manage and operate the major sectors of the economy. The Constitution is clear on even income distribution; abhors monopoly; and calls for safety net for the very poor in the society. By section 16 (2), the state shall direct its policy towards:

- The promotion of a planned and balanced economic development.
- Harnessing and distribution of resources of the nation as best as possible to serve the common good.
- Ensuring that the means of production and exchange are not concentrated in the hands of few individuals or of a group.
- Provision of adequate food, shelter, minimum living wage, old-age care, pensions and unemployment, sick benefits and welfare of the disabled.

The Nigeria Economic Society owes it a duty to this nation to bring the provisions of chapter II to the fore with the view to making them justice-able. This chapter was largely ignored in recent constitutional amendment exercise by the National Assembly. If any section of the 1999 Constitution needs urgent attention, it is the section on the fundamental objectives and directive principles of the state policy. This is to make the provisions justice-able.

Sections 80-83 make pronouncement on public finance by making provisions on powers and control over public funds, including the establishment of Consolidated Revenue Fund, its composition, currency, authorization of expenditures from this Fund, specific directives on the Executive and the National/State Assemblies with respect to the national/State budgets, authorization of expenditures in default of appropriation and Contingency Fund.

The proper interpretation of some of the provisions of Sections 80-83 particularly on the extent to which the national/state assemblies can make changes to the programmes/projects of budgets presented to the legislature by the executive has continued to be a flash point in our budgeting system. Basic parameters such as the benchmark price for computing revenue from oil, provided by the executive should not normally be contested by the legislature, except of course where they are able to demonstrate superior information on the current and future trend of oil prices. National/state assemblies should engage the executive on alternative sources of revenue rather than expend so much energy on the price of oil.

Constituency projects in annual budgets have also been a bone of contention. To start with, representatives have no business promising their individual constituencies what they cannot deliver. They should see themselves as representing the aggregate constituency- Nigeria/ states as approximated by the President/Governors.

This, of course, is without prejudice to their lobbying for projects of benefits to their constituencies. The danger is if representatives continue to have their way, the so-called
Constituency projects would soon crowd-out well considered national/state programmes/projects with very serious consequences. NES should consider making a well thought out position on these two vexed issues to guide the nation. Strictly speaking, arguments for many constituency projects may not stand when confronted with certain provisions of the Second Schedule Parts II and IV of the Constitution considered residual functions of states or LGAs. Besides, there have been many cases of conflict of interests and duplications and hence inefficiencies in funds application in the exercise of constituency projects.

Constitutional provisions in Section 84 relate to incomes policy, including, for instance, national minimum wage, remuneration of public officers, with reference to political office holders. Part I of the Third Schedule sets up a body called Revenue Mobilization Allocation and Fiscal Commission (RMAFC) to determine the remuneration of certain political and public office holders.

The body is also charged to review from time to time the (fiscal arrangements of the Federation) so-called and rather contentious revenue allocation formulae.

RMAFC is one institution that would need to be reviewed for a number of observed defects. Firstly, the concept of one body fixing wages and salaries for the three tiers of government is not consistent with federalism as envisaged. Each tier should be given a certain level of free hand to fix wages and salaries consistent with its resource base.

We shall revisit this later in this address. Secondly, RMAFC has less than adequate information on the competing needs of the nation’s resources and therefore not technically competent to determine the remuneration consistent with current and desired level of growth of the Nigerian economy.

And, thirdly, even when the Constitution requires members of the body to have cognate qualifications, in practice, this is not usually the case, as appointments are based essentially on political considerations. There is little surprise, therefore, that there is a glaring and miss-match between the levels of remuneration of legislators and our level of development.

I have done all that is required and necessary to show the importance of the Constitution in respect of economics. Therefore, the Nigeria Economic Society cannot afford to turn in the other direction or remain silent while the Constitution is undermined in the name of constitutional amendment. Our society must be actively involved in the review of the 1999 Constitution.

This conference is a good beginning. I find the conference theme Institutions, Institutional Reforms and Economic Development: Analytical and Policy Perspectives, particularly relevant in the light of the constitutional amendment/review exercise by the National Assembly. Many of these institutions, as has been demonstrated, were directly or indirectly creations of the Constitution. Thus, reforming them may necessarily require constitutional review/amendments.
The Financial Burden of the 1999 Nigerian Constitution

If I have succeeded in bringing the 1999 Constitution to our consciousness and also its validity as an economic blueprint, we can return to the very important issue of the financial implications of its application. At a workshop organized by the Institute of Administration, Ahmadu Bello University, Zaria, in 1977, I presented a paper entitled Draft Constitution and Mixed Economy. Then, mine was a relatively small voice and hardly anybody paid any serious attention to the issues raised.

The financial implications are here for us to see and feel in 2014 with regard to shortage of funds or lack of back-up cash for programmes or whatever. The stark reality is that the economy is going through severe financial strain. With development funds drying up across the globe, new sources of energy being discovered and the increasing usage of solar as alternative source of energy, it is obvious that Nigeria’s economy is headed for more serious financial difficulties. We must therefore start to explore alternative sources of revenue. First, we must drastically cut down the cost of governance; then leverage on the Constitution to compel federal, states, and LGAs to develop new sources of revenue. The clear message, therefore, is that we cannot continue on the prodigal path as if money is not our problem.

I sent a memorandum to the National Assembly on the financial burden of the 1999 Nigerian constitution recently because the political structure as contained in the 1999 Constitution has severely constrained the management of the Nigerian economy, thereby undermining the country’s growth and development. Public policies have had very little impact on Nigeria’s economic problems over the last two and a half decades of the implementation of the current Constitution. The Constitution has not any appreciable impact on job creation, employment and poverty. Under the present political structure, substantial proportion of the nation’s resources is tied up in consumption with very little left for capital investment.

This situation, as legalized by the 1999 Constitution, does not allow much room for policy manoeuvre particularly, in critical areas requiring intervention, such as infrastructures, including roads, ports, rail lines, airports, power, communications, education and development research, requiring huge capital outlays. Such investments are necessary to provide the enabling environment for the private sector to operate and flourish. The present predicament and struggle for survival by the private sector is directly and closely linked to the weak performance of the public sector in Nigeria over the years. Many manufacturing companies have closed down for lack of power and high operating cost. The clear message, therefore, is that we cannot continue on the prodigal path as if money is not our problem.

It is tempting and indeed fashionable and easier to explain away the weak performance of the public sector as the product of ineffective and inefficient successive administrations at all levels of government in the last two decades. Such diagnosis would be missing a very important fact - the fact that the volume of funds actually available at all levels of government is grossly inadequate to maintain the existing infrastructures and to undertake new ones required for the take-off of the economy.

For instance, since 1999, Federal Government budgets have, on the average, reflected below 30 percent of total for capital expenditures and in many years, actual capital
expenditures fell far below this percentage. The actual percentage capital expenditures were 19.5, 23.4, 27.1, 27.1, 31.0, in 2003, 2004, 2005, 2006 and 2007, respectively. For the financial year 2010, actual capital expenditures, excluding transfers, was only 24 percent of total budget.

The rest of the budget was for recurrent—mostly personal emolument and overheads. The picture for most of the states and local governments is even more depressing. The percentage of budget allocation to capital for most years was much less than 15 percent, with the rest of the budget going for current consumption.

In the circumstances of the meager budgetary allocations for capital development, coupled with the all pervading corruption, there is little surprise, therefore, that annual budgets have had little or no impact on Nigeria’s economy over the years. The budgets have not been capable of halting the decay in the public sector and the consequential collapsing private sector, as evidenced by the large number of companies closing shop every year. Since 1999, the economy has been losing more jobs than it has been creating and most of other socio-economic indices have been on the downward trend (see Appendix on some development indicators).

It is important to re-emphasis the point that the problem is not so much about the quality of the management tools contained in these budgets but that the resources allocated to the capital contents are far below what is required to make any appreciable impact on Nigeria’s infrastructural and other problems.

Therefore, as long as we continue to look for solutions within the context of existing paradigm, we would continue to run fast to be, at best, on the same spot. Rather we must look outside the ‘box’ for solutions to our development problems.

Specifically, we would require a ratio of at least 40:60 recurrent/capital at all tiers of government, for our budgets to begin to have any meaningful impact on our major economic problems.

It is, however, obvious that this ratio cannot be accommodated within the exiting fiscal structure as dictated by the political structure contained in the 1999 Constitution.

This Constitution is rather too consumption friendly and its operation constitutes a heavy financial burden on the Nigerian economy. And if we are to make progress, we must, as of necessity, take a close and dispassionate look at the Constitution with the view to making necessary drastic changes.

With this in view, the rest of my address identifies provisions in the 1999 Constitution whose operation constitute financial burden on the economy and suggests directions for review.
The Legislature

Section 47 of the 1999 Constitution stipulates a bi-cameral legislature at the Federal level-viz, the Senate and House of Representatives. It goes further, in Sections 48 and 49 to indicate the number of representations in each chamber from each states and the Federal Capital Territory, Abuja. By the operation of these sections, therefore, there are 109 members of Senate and 360 members of the Federal House of Representatives, giving a total of 469 members in the National Assembly. In the 2010 Appropriation, the budget estimates in respect of personnel and overheads was 138.02 billion naira. This, obviously, is a heavy financial burden which should be pruned down by a reduction in the number of representations at the National Assembly.

In this respect, the following lines of amendments of the 1999 Constitution are suggested.

Adopt a National Assembly, with membership as follows;

a. The 36 States should be stratified by population into Three Categories-of approximately equal sizes-low, medium and high population states.

b. Based on the principle of equality of states, each state should have THREE representations.

c. The Medium population states should each have one extra representation, while the high population states should each have TWO extra representations.

d. The Federal Capital Territory should have ONE representation at the National Assembly.

(See Appendix for simulation analysis of the suggested scheme based on the 2006 population census). The results are sufficiently robust and encouraging to recommend the scheme for serious consideration.

By this scheme, we would reduce the membership of the National Assembly from the present 469 to about 145. Correspondingly, we would reduce Personnel and Overhead costs of the National Assembly by approximately the same proportion and would reduce the number of politicians who have access to the public till. This downsizing will be consistent with the devolution of functions and powers to the lower tiers of government. If applied to the 2010 Appropriation, Personnel and Overhead costs would have been 42.67 billion naira, with a savings of about 95.35 billion naira on this expenditure item!

We note two important arguments for a bi-cameral legislature- equality of states and checks and balance of opinions, at the National Assembly, on critical issues of interest to the nation. While the equality of states argument has been taken care of in the scheme suggested above, we observe that checks and balance have been largely absent between the Senate and the House of Representatives. In reality, both Chambers are homogenous in many respects. They have, over the years, held very similar views on almost all issues of importance to the nation. In fact, on the very important matter of resource appropriation, the two chambers have been much together, while the nation has been on her own!
At the States’ level, Section 91 of the Constitution should be amended to allow only one* representation from each local government at the State House of Assembly. Each ward should continue to have one representation at the Local Government Council. However, all Councilors should serve on part-time basis and paid only sitting allowance.

The Executive
The provisions of Section 14(3) and Section 147(1-3) on the Principle of Federal Character and appointments, effectively severely tie the hands of the President on the issue of the size of his Cabinet and appointments into Boards, Commissions, Councils etc.

The result is an unwieldy team with bourgeois budget, many getting on each other’s way and a considerable number of hands underutilized in the public sector. For instance, it is a well known fact that many Ministers of State are underutilized with frequent squabbles between them and Ministers in-charge of ministries.

We suggest an amendment to specifically recognize the six “geopolitical zones in the constitution. These Zones could then be used as a basis for the interpretation of the Federal Character Principle. This amendment should free the President’s hand in the constitution of his team. Specifically with this amendment, he should;

a. appoint only Three Ministers, Two Advisers and One Board member from each Geopolitical Zone;
b. ensure that no Board has more than Six outside members; and
c. that all Members of Boards, Commissions, Councils etc serve strictly on part-time basis and paid only sitting allowance.

From the present cabinet size of almost 100 including Advisers, it is easy to see the considerable financial savings that would be derivable from the suggested amendments. With the devolution of functions and the corresponding powers suggested, the President requires only a small and efficient team to perform his duties, while freeing enormous resources for development. In a similar manner, the current Senatorial Districts (now to be known as State Districts) should serve for the interpretation of the ‘State Character’.

This would allow for more flexibility in appointments into state cabinet, corporations and boards. Such appointments should be limited to Three, Two and Two as Commissioners, Advisers and Board Members, respectively from each District. In addition, it is suggested that the board members should serve on part-time basis and paid sitting allowance only. All such positions, including the position of the Governor, should be rotated amongst and within the State Districts to give a sense of belonging.

Constitutional and Fiscal Federalism
The Constitution should be amended to further actualize the principle of federalism. This will correspondingly strengthen fiscal federalism. Consistent with this position and the need to limit recurrent expenditures to about 40 percent of totally collected revenues at all tiers of government, there will be need to:
• Amend the Section 4 of the second schedule with the view to reallocating the powers and functions of all tiers of government for more efficient utilization of our national resources.

• Evolve new Fiscal arrangement consistent with a) above and for the enhancement of independent revenue sources and tax effort, in particular, abolish Section162 (5-8) with the view to giving financial autonomy to LGAs.

• Operate membership of all the statutory commissions and bodies on part-time basis. We do not require full-time and each state representation in most of the commissions including, the Revenue Mobilization, Allocation and Fiscal Commission, the Federal Character, Federal Civil Service, Conduct Bureau, etc where most of their work are carried out by the bureaucracy.

• Amend Section 84 to allow review of the level of remuneration of political office holders. Given our present level of development, the very high unemployment level, low productivity, the knife-edge resource base of the economy, rapidly dwindling resources and the desire for development friendly budgets, the current levels of their salaries and allowances can neither be justified nor sustainable for long.

The levels will need to be rolled back, by at least 50-60 percent. A combination of tax, wages and incomes policies, at both federal and state, that will incorporate the private sector, will be needed as part solution to the unemployment problem. Furthermore, each tier of government should, as much as possible, evolve its wages and incomes policy considering its ability to pay and the cost profile facing each of it. Consequently, there will be need to review the relevant sections of the Third Schedule Part I (N) setting up the Revenue Mobilization, Allocation and Fiscal Commission.

A definite ratio of 40-60 recurrent-capital of budgets at all tiers of government should be in the statute book, reviewable only after 10 years, for the political leadership to take capital investment in the economy more seriously.

I cannot conclude this address without saying a word or two about the raging debate on the remuneration of our legislators. Again, let me anchor my contribution to the debate on the provisions of the 1999 Constitution. Two bodies are empowered by the 1999 Nigerian Constitution to determine the remuneration of political office holders at the three tiers of government-the National/State Assemblies and RMAFC.

First, according to Sections 84(1) and 125(1) “there shall be paid......officers mentioned in (84(4) and 125(4)) such remuneration, salaries and allowances, as may be prescribed by the National/State Assemblies. But not exceeding the amount as shall have been determined by RMAFC”.

Sections 8(4) and 125(4) include President, Vice President Governors, Deputy Governors and Heads of the Judiciary and Chairmen and members of certain Executive bodies.
Second, by the Third Schedule Part I (N) RMAFC shall have powers to determine the remuneration appropriate for political office holders including, The President, Vice President, Governors, Deputy Governors, Ministers, Commissioners, Special Advisers, Legislators and the holders of the offices mentioned in sections 84 and 124 of the Constitution.

Therefore, the problem of over bloated remuneration of legislation must be placed squarely at the door steps of RMAFC, since by Section (84) and the third schedule, National/State Assemblies can only ratify but not change what have been determined by RMAFC. This observation further confirms the defect in RMAFC earlier identified.

Hence, any amount paid to themselves by legislators over and above what has been determined by RMAFC (under any disguise whatsoever) is illegal and must be recovered - from them by the appropriate agencies. The combined reading of all the sections mentioned above is to ensure that legislators (political office holders) do not determine their own remuneration, however defined.

The Constitution, which is the supreme law of the land, does net permit legislators to add one kobo to their remuneration under any disguise. As a matter of fact, legislators are expressly excluded from the list in sections 84(2) and 125(2) to ensure this is the case. Neither does the Constitution permit legislators to raise funds, not even a kobo, because raising funds is an executive function.

But because of our culture of impunity, greed and endemic corruption, our legislators create overt schemes for making extra remuneration, through senate/house rules/orders, such as approval of, and monetization of legislative aides, deciding on legislative sitting allowances, number of travels outside Nigeria, constituency allowance, etc.

Again, because of our culture of impunity, legislators can, and have approached banks to raise funds and share the proceeds amongst themselves etc. The list of impunities is limitless. All such allowances, which are creations of senate/house rules/orders, do undermine the supreme law of the land which forbids legislators borrowing or appropriation of money for themselves. Yes, there is anger over the outrageous and insensitive salaries and allowances of our lawmakers.

However, let us not fail to ask the right questions on the political structure that has led to the unfortunate situation. The audacity, the impunity, corruption, stealing of pension funds, fake oil imports, stealing of crude oil, pipeline vandalism, election frauds, admission and examination cheats in high places- government, legislature, judiciary and universities too. Let us tackle the system that has created this situation which Nigeria must tackle very quickly.

Finally, I wish to draw your attention to the convergence of politics, law and economics at the making of a Constitution as lessons for the future. In the making of the 1999 Constitution, focus was mainly on politics and law, with little attention to its implications on the economy. The 1999 Constitution was not subjected to financial viability test and obviously, on reflection, it would not have passed such a test.
The operation of the current Constitution is too consumption friendly, while it leaves very little of our resources for capital investment. This situation must be reversed if we are to arrest the obvious drift of the economy from total collapse in not distant a future. In amending the 1999 Constitution, therefore, we should take the opportunity to correct this serious defect in the interest of the national economy and also to protect the very democracy.

As previously discussed, it is important to keep the viability of the Constitution that created them in mind in the reform of these institutions. And to be meaningful, we must define these institutions beyond the organizations to include their procedures, processes and the mindset of the people who will run them. Therefore, amending the 1999 Constitution must go beyond the current cosmetic approach by the National Assembly to be useful. The exercise requires a comprehensive review which, if not beyond the powers of the National Assembly, would, nevertheless, call for political will and patriotism on the part of Nigeria’s leadership.

Footnotes

1 Keynote Address delivered at the annual conference of The Nigerian Economic Society-16th-19th September, 2013
Appendix B: Distribution of States in Geopolitical Zones by Population Size

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Notes on the Tables

Table A shows the population of states and FCT arranged in ascending order, starting with FCT and ending with Kano as per 2006 population Census. The states have been stratified into three groups of Low population states, Medium population states and High population states.

To read Table B, for example, North Central Geopolitical Zone (NC) has Eight states distributed as 3, 2, 3 in Low, Medium and High population states, respectively: similarly, South-West Zone (SW) with Six states is distributed as 1, 3, 2 into Low, Medium and High, respectively.

There are a total of 12 Medium population States with (X4) 48 delegates.
There are a total of 32 delegates from NW Zone.
There is a Grand Total of 145 delegates in ALL
GPZ = Geo Political Zone