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THE STATE, ETHNICITY AND HUMAN RIGHTS IN AFRICA

WRITTEN BY **EGHOSA E. OSAGHAE**

Contrary to a popular but misleading view¹, the prevalence of group rights in Africa is not due to any cultural or traditional peculiarity, but derives from the manner in which the state originated and has been reproduced since colonial times. It has more to do with the foundations of the state, the nature of state building, and the manner of citizen construction and definition. It is this largely uninterrogated trajectory of human rights in Africa that is explored in this article.

The central argument is that the state is a terrain of ethnic claims and counter-claims, and has been organised (and reorganised) on this basis since colonial times. This provides the platform for the demands for group rights. These are some of the issues analysed in this paper, with illustrations predominantly from Nigeria.

Ethnicity and Human Rights

Ethnicity has contrasting implications for human rights. On the one hand, it is negative, because it becomes linked to discrimination and unequal differentiation. On the other hand, by providing and legitimising a basis on which people can identify themselves, aggregate and defend their interests, and make valid claims on the state and society on behalf of individual members of the group, ethnicity is positive for human rights.²

Above: El-molo warriors from Kenya participate in a traditional ceremony. Ethnic identification provides a platform for group rights and related demands in Africa.

The seemingly contradictory effects are, however, connected in an interesting way: discrimination and unequal differentiation generally provide the basis for demanding redress or justice in the form of rights – claims, liberties, powers and immunities. At the same time, though, dominant and oppressor groups also seek to perpetuate their positions, using the same means.

At the heart of the relationship between ethnicity and human rights are group rights, which may be defined as rights that belong to a group, and can only be enjoyed by individuals as members of that group. Like individuals, groups need preservation, survival and development, for which certain rights such as the right to non-discrimination, language, culture, religion, socio-economic development and – depending on the nature of the group – some measure of relative autonomy or self-government, are required. People suffer deprivation, exclusion, oppression, persecution and discrimination or, conversely, enjoy preferential treatment and inclusion as members of groups. In Rwanda, Hutus were victims of genocide, just as the Igbos were in northern Nigeria in the 1960s, whether or not they individually cherished the identity of being Hutu or Igbo.³ African-Americans are discriminated against in schools, employment, workplace

as a basis for group rights is evident in its potential to be an emancipatory and liberating force. The actualisation of this potential depends on the extent to which ethnicity is successfully politicised, where politicised ethnicity refers to the articulation of interests in the name of the ethnic group and the struggle to redress or defend those interests. Invariably, politicised ethnicity involves the claim to a 'right' or 'entitlement'. It is in these terms that the African elite and ethno-nationalists have developed ethnicity "into a liberating force against colonialism and, after independence, against authoritarian states".⁶

Three points arise from the conception of ethnicity as a liberating force. The first, which has already been highlighted, is that ethnic mobilisation inherently involves the assertion of claims, rights, entitlements to self-determination, development and advancement, protection, autonomy, inclusion and just, fair and equitable treatment. Second is the agency role of the elite. The literature on ethnicity in Africa mostly explains this role in terms of the instrumental uses to which ethnicity is put, the prevalence of neo-patrimonial structures of legitimisation, the cost-effectiveness and overall efficacy of ethnic mobilisation compared to – say – monetary pay-offs, class mobilisation and other strategies, and the fact

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and business, just as black South Africans (as well as indigenous Liberians) were oppressed by apartheid laws, as members of groups. In all these instances, members of the group, being bound by putative kinship ties, had to mobilise to defend themselves and to further their collective interests.

It is unnecessary to enter into the long-standing debate provoked by liberalists over the realness or validity of group rights since, as it is claimed, rights belong to individuals.⁴ It suffices to make the point that there are rights, such as the right to self-determination, and entitlements, like affirmative action, that can only belong to groups.⁵ Some individual rights are derivatives of group rights, in the sense that they can only be enjoyed when empowering, protection and survival claims made by the group have been accorded legitimacy. For example, without balancing the redressive and redistributive policies of affirmative action, the quota system and ethnic arithmetic, individual members of disadvantaged groups cannot enjoy 'equal' rights in the economic, social and political spheres.

The case for group rights in Africa is strengthened by the fact that the state has deep ethnic foundations, a point that is discussed further in the next section. Ethnicity

that the state is more likely to respond to ethnic, religious and regional threats, which involve territorial claims, than those based for example on class.⁷ While these explanations offer more insight into the nature of ethnic politics in Africa, they do not tell us why ethnic politics is so deeply embedded in state politics. Why, for example, have political parties tended to be ethnic machines, why do ethnic considerations shape constitution-making, and why are ethnic matters so fundamental to state power holders? These questions can only be answered in terms of the fundamentality of ethnicity to the state, which leads to the third point about the central role of ethnic nationalism in the reconstruction of the post-colonial state (and the colonial state before it), which is one of the levers of democratisation in Africa.⁸ In the section that follows, the ethnic foundations of the state are further discussed to place these three points in clearer perspective.

Ethnic Foundations of the State and Ethnic Claims: The Nigerian Example

The ethnic foundations of the contemporary Nigerian state and, indeed, other post-colonial states in Africa were laid during the acquisition of colonial possessions that were later grouped into states. The process involved the



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Nigeria's traditional rulers and leaders represent the ethnic organisation of the state since colonial times.

signing of treaties with chiefs and kings of pre-colonial kingdoms and states, and the conquest of recalcitrant groups. Although these groups were not consulted in the eventual partition of territories, and the states that subsequently emerged were authoritarian, militarist and disconnected from indigenous civil society and social formations, colonial acts of creation – especially in British territories – were mostly hinged on the ‘ownership’ of the new state by ethnic leaders who, in this instance, were the traditional authorities. The privileging of primordial structures by the British is often attributed to the imperatives of indirect rule, as well as the initial efforts to counteract the growing influence of the emergent Western educated elite, who demanded self-government and greater participation in the management of the affairs of the colonies.

A close reading of certain colonial policies and practices, however, suggests that the privileging was more grounded than these attributions lead us to believe. The concept of national self-government was only applicable to “self-contained and mutually independent native states”.⁹ In relation to human rights, this meant that only native authorities and ethnic groups had rights. There was no room for individual rights since individuals, as subjects rather than citizens, could only relate to the state

as members of ethnic groups and Native Authorities.¹⁰ This notion of collective rights was carried through to independence, where the emphasis was on the right of “colonised peoples” to self-determination. It was not until the assault on home-grown authoritarianism in the second liberation that the struggle for individual rights actually began.¹¹

The major consequence of the key roles accorded to traditional structures in the process of state building was the legitimisation of ethnicity as the foundation of the state. This began with traditional authorities themselves which, as leaders of their groups and symbols of cultural distinctiveness, had the legitimate right to function as ethnic entrepreneurs. By shutting out the emergent Westernised elite – in the initial stages at least – the colonisers made it clear that only constitutive ethnic interests mattered, and thereby “encouraged or reinforced a natural parochialism”.¹² The importance of this was not lost on the emergent nationalists and political elites, who proceeded to form cultural organisations and ethnic-based political parties, and retribalise themselves by, amongst others, acquiring chieftaincy titles and aligning with traditional authorities.¹³ Thus, political parties that have operated in the country since the



The Ijaw people of the Niger Delta participate in a ceremony with their traditional war boats.

nationalist era have been mostly ethnic, in spite of constitutional attempts by 'corrective' military governments to ensure the emergence of national parties.

The truism of the ethnic foundation of the state manifests in three other ways – namely, the emergence of ethnic organisations other than political parties to champion ethnic interests during periods of transition and crisis; the perception that ethnic nationalities rather than (the 'artificial') states and local government units are the constituent units of the federation; and various actions of state power holders that underscore its ethnic reproduction. With regard to the emergence of ethnic organisations, the experience of the transition to the Fourth Republic, which was inaugurated in 1999, and afterwards, is very instructive. The manufacturing of 'test-tube' parties and so-called 'new-breed politicians' as transition vehicles by various military heads of state – notably generals Babangida, Abacha and Abubakar – which began with an imposed two-party system in 1990, produced fragile and artificial parties that functioned merely as electoral platforms.

This necessitated a (temporary) shift from political parties as the fulcrum of ethnic politics to powerful ethno-regional organisations¹⁴, ethnic militias¹⁵, radical

youth groups¹⁶, and cultural and political diaspora organisations. These emerged after the military had successfully repressed ethnic and pro-democracy agitations at home, forcing the locale of democratisation to move abroad. These various groups have made strong claims on the state on behalf of their ethnic constituents. The demands range from a power shift from the north (where it has mostly been since independence) to the south, made by Afenifere and Ohaneze Ndigbo (Yoruba and Igbo organisations), and compensation for the losses suffered by the Igbo during the civil war, to demands for resource control and adequate compensation for the hazards of oil exploration and production by the minorities of the Niger Delta. These issues formed the core of what has come to be known in Nigeria as the National Question¹⁷, which leaders of the ethnic organisations, as well as pro-democracy and human rights groups, insist can only be resolved through the convocation of a Sovereign National Conference of ethnic nationalities.

The clamour for a conference of ethnic nationalities is borne out of the perception that the country's over 300 ethnic groups – rather than the 36 states and 774 local government units – are the 'original' constituents of the federation. This perception derives from the

THE MAJOR CONSEQUENCE OF THE KEY ROLES ACCORDED TO TRADITIONAL STRUCTURES IN THE PROCESS OF STATE BUILDING WAS THE LEGITIMISATION OF ETHNICITY AS THE FOUNDATION OF THE STATE

disaggregative nature of Nigerian federalism, which has seen the open-ended creation of what are sometimes artificial states and localities, and the fact, therefore, that these units are not constituted or designed to protect discrete ethnic interests. Even those states that have relative ethnic homogeneity – such as the Igbo states of the south-east, the Yoruba states of the south-west, the Hausa/Fulani states of the north-west, and the Ijaw state of Bayelsa in the south – lack the viability and autonomy required to enable them to function as agents of self-determination and development.

It is the failure of the state (and local) tiers of government to respond adequately to complex ethnic demands that underlie the transition from “accommodation-seeking nationalism”, which sought space within a centralised federation, to “self-determination nationalism”, which seeks a non-centralised system with viable states.¹⁸

The imperatives of self-determination nationalism cannot be satisfied without political restructuring, which explains the agitation for “true federalism”. What is significant, however, is that with a few notable exceptions¹⁹, the most ardent advocates of genuine federalism and a Sovereign National Conference have been leaders of ethnic organisations, rather than the state or local governments. This underscores the fact that the state – from the point of view of the leaders of the various ethnic groups, in this instance – has strong ethnic foundations.

The final and historically most consistent manifestation of the ethnic foundation of the state, which has also been the major propellant of group rights, is the action of state power holders. The colonial state, as was pointed out earlier, made ethnic rights the fulcrum of the evolving state. In the process, it created a ranked ethnic system that differentiated major from minority groups, positioned

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Politicised ethnicity refers to the articulation of interests in the name of the ethnic group and the struggle to defend those interests.



Niger Delta's minority groups remain in poverty while the oil rich lands on which they live support the country's economy.

groups like the Fulani and Hausa as 'superior' to others, allowed the oppression of minorities in the regions into which the country was divided, and promoted uneven development among the groups, especially between southern and northern groups. The ethnic minorities bore the brunt of these stratifications and structural inequalities, and historically have been at the forefront of the struggles for collective rights to protect them from majority oppression.²⁰


The problem of the Niger Delta minorities – from whose lands oil on which the country's economy depends is derived, but they still remain in abject poverty – presents perhaps the most serious aspect of the minority groups' problems today. The response of the federal government to attempts made by the groups to assert their political and economic rights in the face of such grave injustice, has been a mix of repression²¹ and appeasements²², rather than the fundamental restructuring of the federal system – especially in the areas of local political autonomy and control of local resources by state and local governments. Also, the culpability of the various multinational oil companies in the perpetuation of injustice in the Niger Delta has yet to be addressed in a systematic or holistic way. Right now, individual companies are left to apply their standards to deal with the communities.

The oppression of non-Muslim minorities in core Muslim parts of the north, especially following the introduction of sharia law, and perennial conflicts among minorities in the various states arising from new forms of oppression by emergent majorities in the new states, present other levels of the problem. The major reason that the creation of more states (and local governments) has failed to 'solve' the problem of minorities is the over-centralisation of power and resources in the federation, and the corresponding loss of fiscal and political autonomy and capacity by the states. This, as we have seen, is the major ground for the agitation to restructure the federal system – possibly through the convocation of a Sovereign National Congress – to, amongst others, give the constituent units greater control over resources and restore state rights.

In summary, it becomes clear that the post-colonial state has had as much responsibility for ethnicising the state as its colonial predecessor. Indeed, citizenship is based on ethnicity – the 1999 Nigerian constitution stipulates that belonging to a group 'indigenous' to the country is a condition for citizenship. It follows from this that a citizen's status and quality of life are bound by the strengths, weaknesses, superiority or inferiority of the ethnic group of which she or he is a part. The operation of distributive and balancing formulas like the federal character principle and quota system – which appoints people to government positions, admits students to public schools and recruits officers and men into the military and police based on their groups of origin – reinforces this functional or group-mediated (as opposed to direct citizen-state) principle of citizenship. Some actions of state power holders have also had the same effect. In the early 1990s, the then-Nigerian military president, General Ibrahim Babangida, released pro-democracy opponents of his government to the traditional rulers of their ethnic groups (the Ooni of Ife and the Emir of Kano), in a gesture that suggested that political relations – including opposition – were ethnically based, and that traditional rulers were answerable for the actions of their 'subjects'. This is a significant example of the ethnicisation of the public domain.

Conclusion

The Nigerian experience shows that group rights are crucial in Africa, not because of any cultural peculiarity or relativity, but because ethnicity and notions of ethnic rights constitute the foundation of the state. The colonisers determined that rights could only be claimed by ethnic groups, a point that was given institutional anchor in the creation of subjects who related to the state through their groups of origin, rather than citizens. There has been no fundamental change to this foundation in the post-colonial period, in part because independence was

achieved on the basis of negotiated ethnic settlements. It is within the context of the stratified, discriminatory and oppressive ethnic systems that the emancipatory potential of ethnicity as a medium for asserting the rights of weak, vulnerable and oppressed groups has taken root. In Nigeria, this phenomenon explains why political parties have mostly been ethnic, why transitions and crises provoke ethnic claims and counter-claims, and why leaders of ethnic groups perceive of themselves as more 'original' shareholders of the federal state than the (artificial) states and local governments which, from a legal-constitutional perspective, are the constituent units. It also explains why the clamour for true federalism and the reinvention of the state through a national conference have been spearheaded by leaders of ethnic nationalities. 

Dr. Eghosa E. Osaghae is a Professor of Comparative Politics and the Vice Chancellor at Igbinedion University in Okada, Nigeria.

Endnotes

- 1 Howard, R. (1986) *Human Rights in Commonwealth Africa*, Ottawa: Rowman and Littlefield.
- 2 Cohen's (1993: 16, 17) observation that "On its own, ethnicity has no relation to human rights" is therefore incorrect, although he is quick to recognise that "once the scene shifts to interethnic relations, rights matters change significantly". Cohen, R. (1993) 'Endless Teardrops: Prolegomena to the Study of Human Rights in Africa' in Cohen, R., Hyden, G. & Nagan, W.P. (eds.) *Human Rights and Governance in Africa*, Gainesville: University Press of Florida, pp. 5-19.
- 3 This partly answers the criticism by opponents of group rights that because individuals have multiple identities and that ethnicity, for instance, is situational, it is difficult to determine which groups require which rights. The point here is that some groups – call these primary groups – create more fundamental identities, what Clifford Geertz (1963) referred to long ago as the "natural givens of life" that affect the daily lives of individuals more than others. Depending on the extent to which a polity is divided, ethnic, religious and racial groups belong to this category. Geertz, C. (1963) *Old Societies and New States*, Glencoe: The Free Press.
- 4 Berting, J. et al (ed.) (1990) *Human Rights in a Pluralist World: Individuals and Collectivities*, Westport: Meckler.
- 5 Raz, J. (1986) *The Morality of Freedom*, New York: Oxford University Press; Osaghae, E.E. (1996) 'Human Rights and Ethnic Conflict Management: The Case of Nigeria' in *Journal of Peace Research*, Vol. 33 no. 2, pp. 171-188.
- 6 Mohammed Salih, M.A. (2001) *African Democracies and African Politics*, London: Pluto Press, p. 24.
- 7 Osaghae, E.E. (1991) 'A Re-examination of the Conception of Ethnicity in Africa as an Ideology of Inter-elite Competition' in *African Study Monographs*, Vol. 12 no. 1, pp. 43-61; Yeros, P. (ed.) (1999) *Ethnicity and Nationalism in Africa: Constructivists Reflections and Contemporary Politics*, Houndsmill: Macmillan.
- 8 Osaghae, E.E. (2004) 'Political Transitions and Ethnic Conflict in Africa' in *Journal of Third World Studies*, Vol. 21 no. 1, pp. 221-240.
- 9 Coleman, J. (1958) *Nigeria: Background to Nationalism*, Berkeley: University of California Press, p. 194.
- 10 Mamdani, M. (1996) *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, London: James Currey.
- 11 Ekeh, P.P. (1997) 'The Concept of Second Liberation and the Prospects of Democracy in Africa: A Nigerian Context' in Beckett, P. & Young, C. (eds.) *Dilemmas of Democratization in Nigeria*, Rochester: University of Rochester Press, pp. 83-110.
- 12 Coleman, J. (1958) *Nigeria: Background to Nationalism*, Berkeley: University of California Press, p. 53.
- 13 There is hardly a notable politician in the country that does not have one chieftaincy title or the other in the bid to legitimise their claims to political leadership. Typically, the politician has the title of 'leader' or 'war commander' of the ethnic group. It is also difficult for politicians and parties to secure electoral victories without the support of traditional rulers.
- 14 Notable examples were Afenifere and Yoruba Council of Elders for the Yoruba, Ohaneze Ndigbo and Igbo National Assembly for the Igbo, Arewa Consultative Forum and Arewa People's Congress for the Hausa/Fulani-North, Ijaw National Congress, Movement for the Survival of Ogoni People, United Middle Belt Congress, and Southern Kaduna Progressive Union.
- 15 Militias, which employed what were essentially 'traditional' methods of militancy – rituals and juju – included the O'dua People's Congress and O'dua Liberation Movement for the Yoruba, Bakassi Boys for the Igbo, and Egbesu Boys for the Ijaw.
- 16 The most active youth groups are in the Niger Delta, where they have spearheaded the assault on the state over resource control and adequate compensation for oil exploration and production.
- 17 Osaghae, E.E. & Onwudiwe, E. (eds.) (2007) *The Management of the National Question in Nigeria*, Okada: Igbinedion University Press; Momoh, A. & Adejumo, S. (eds.) (2002) *The National Question in Nigeria*, Aldershot: Ashgate.
- 18 Osaghae, E.E. (2001) 'From Accommodation to Self-determination: Minority Nationalism and the Restructuring of the Nigerian State' in *Nationalism and Ethnic Politics*, Vol. 7 no. 1, pp. 1-20.
- 19 The exceptions include the clamour by the Alliance for Democracy, one of the three major political parties, which has firm roots in the Yoruba south-west and has pursued a regionalist agenda, and Governor Ahmed Tinubu of Lagos State, who has been a strong advocate of true federalism, complete with state police and fiscal autonomy.
- 20 Osaghae, E.E. (1998) 'Managing Multiple Minority Problems in a Divided Society: The Nigerian Experience' in *Journal of Modern African Studies*, Vol. 36 no. 1, pp. 1-24.
- 21 Most notably, the execution of Ken Saro-Wiwa and other Ogoni rights activists, the deployment of federal forces to repress the youth, which resulted in the destruction of Odi town in 1999, and the periodic detention of leaders of militant groups.
- 22 These have mainly involved the establishment of special federal agencies, of which the most recent is the Niger Delta Development Commission.



A GENDER ANALYSIS OF THE KENYAN CRISIS

WRITTEN BY **SEEMA SHEKHAWAT**

Introduction

Once seen as one of the most stable democracies in Africa, Kenya recently experienced violence of an unprecedented magnitude following the parliamentary and presidential elections of 27 December 2007. According to election results, the majority of the parliamentary seats were won by the opposition Orange Democratic Movement (ODM) party, led by Raila Odinga, who also was in the lead during the presidential elections. However, in a sudden turnaround, the Electoral Commission of Kenya announced that incumbent president Mwai Kibaki had won the election. While the dispute between the government and the opposition parties reached some form of resolution through international mediation, the consequences of the turmoil were, unfortunately, far-reaching and severe.

The reported election fraud that reinstated Kibaki into the presidency plunged Kenya into a serious political crisis, with huge economic and humanitarian ramifications. The ethnic-based violence in the aftermath of the disputed polls resulted in a trail of death, destruction and displacement. While the economic consequences were felt domestically, regionally and globally, the humanitarian costs in terms of large-scale killings and internal displacement were unprecedented in Kenya's recent history. This article focuses specifically on the gender

Above: Sexual violence is the most widely documented victimisation that women suffer, particularly rape during armed conflict. Women walk past a poster emphasising this message, in Nairobi, Kenya.