

Federal Republic of Nigeria

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Nigeria, named after the River Niger, is situated on the southern coast of West Africa. It shares borders with Benin to the west, Cameroon and Chad to the east, and Niger to the north. Nigeria has been federal since independence in 1960 mainly because it is multiethnic and multireligious, yet Nigeria's territorially based diversity also militates against both federalism and democracy by producing, in response to divisive and centrifugal forces, highly centralized military and civilian governance characterized by undemocratic or weakly democratic rule. The country's oil wealth, too, has been more of a curse than a blessing because it has aggravated regional conflict, encouraged the centralization of national revenue, and stimulated widespread and systematic corruption throughout Nigeria's political and socio-economic systems. Consequently, there is a huge gap between the promise of Nigeria's rather well-designed federal constitution and the practice of Nigeria's federal democracy.

Nigeria, the "Giant of Africa," has a land area of 923,733 square kilometres (slightly more than twice the size of California) and the largest population in Africa (estimated at between 120 and 133 million people).¹ Nigeria's 1963 census reported that of the nation's citizenry 48 percent are Muslims and 34 percent are Christians (with many smaller religious groups mixed in), but the contemporary Muslim-Christian ratio is unknown and also a contentious issue. Given that nearly one out of every six Africans is a Nigerian, Nigeria has both more Christians and more Muslims than any other African country.

Nigeria is made up of more than 250 ethnic groups,² the three major ones being the Hausa/Fulani, the Igbo, and the Yoruba, which together account for more than half the population. Other sizable groups include the Edo, Ibibio/Efik, Ijaw, Tiv, Nupe, Kanuri, Igala, and Urhobo. Although most Nigerians speak at least one of the three major indigenous languages -- Hausa, Igbo, or Yoruba -- some 250 languages are spoken, and the official language, a colonial inheritance, is English. The predominantly Muslim Hausa/Fulani mostly inhabit the Northwest. The predominantly Christian Igbo, who are arguably the most mobile ethnic group (owing partly to their commercial dexterity), mostly inhabit the Southeast. The Yoruba are, religiously, a mixed group and live mostly in the Southwest. However, almost a century of living under one rule has dispersed people of all ethnic and religious groups throughout all parts of Nigeria. While this dispersion has reduced the country's traditional divide between the Muslim North and Christian South, it has also produced interreligious and interethnic violence in some parts of Nigeria, such as Kano in the North, resulting in more than 10,000 deaths in recent years.

The Federal Constitution in Historical-Cultural Context

One can speak of four periods of modern Nigerian history: colonial, early democratic, military, and contemporary democratic.

Constitution Making During the Colonial Era

The creation of Nigeria's federation is rooted in the country's colonial history. Before the Europeans' arrival, there was no political entity known as Nigeria. Precolonial Nigeria consisted of a bewildering variety of communities and entities of varying sizes, levels of political and social development, and degrees of independence and autonomy.³ Sometimes, and in some

places, powerful entities, such as the Benin Kingdom, the Kwararafa, Kanem-Borno, the Hausa states, the Sokoto Caliphate, and the Oyo Empire, brought their neighbours as well as distant groups under their nominal jurisdiction, but at no time before the British arrived was Nigeria even loosely ruled by one government. At all times, many groups of various sizes, such as the Tivs of the Middle Belt, the Ijaws of the Niger Delta, the hundreds of autonomous Igbo communities, and many lesser-known peoples maintained a separate and self-sufficient status.

British colonization began officially in 1861 with the establishment of the Colony of Lagos. British encroachments continued northward from the coast in imperialist competition for territory, particularly with the French. This process concluded with Britain's 1900 declaration of its Protectorate of Northern Nigeria in addition to that of Southern Nigeria. Since then, Nigeria's boundaries have not changed, except that the Northern Region was augmented after the First World War by accessions from the ex-German Cameroons.⁴ The Protectorates of Northern and Southern Nigeria and the Colony of Lagos were amalgamated under a single British administration in 1914, and from then until 1954, Nigeria was formally governed as a unitary state.⁵

Thus Nigeria was created not by a voluntary union of previously existing, closely related, and freely contracting political units but by the imposition of union by an imperial power on an artificially demarcated territory containing a heterogeneous population of strangers. Although these strangers had established many economic, social, and political links among themselves long before British rule, they did not recognize themselves as one people or as one political community. In the context of the emergence of the Nigerian federation, the absence of an enabling environment for a credible negotiation of federal-state relations in part accounts for why Nigeria's federal system tilts in favour of the federal government.

The British did introduce a truncated version of English law as the basic law of Nigeria, but they allowed the indigenous peoples to be governed mostly by their own customary laws and interfered little in the day-to-day workings of Nigeria's subunits and communities. The British also embarked on state building, but in doing so, they treated the North and South differently. In 1923, for example, Britain created an Advisory Legislative Council to advise the governor in the South, but such a body was denied to the North. In 1939 Britain divided the Southern Region into the Western and Eastern provinces. This differential treatment was perhaps in recognition of the diversities of language, culture, and religion in Nigeria, the contrasting political communities and economies of the North and South, and the size of the territory, but by adopting this method of administration, the British implicitly conceded to federalism as a mode of governing Nigeria and to asymmetric differences in regional policies.

Although formally governed as a unitary state for 40 years, Nigeria came to be composed of three distinct administrative regions: the Western Region, dominated by the Yorubas; the Eastern Region, dominated by the Igbos; and the vast Northern Region, dominated by the Hausa/Fulani ruling class of the ex-Sokoto Caliphate. During the late colonial period, moreover, the British gave Nigerians more access to legislative and executive authority. The Richards Constitution of 1946 provided for a Legislative Council representing the whole country and also for Northern, Western, and Eastern councils. This creeping federalism was reinforced by the Macpherson Constitution of 1951, which made the three regions more autonomous. When Nigeria was converted into a federation under the so-called Lyttleton Constitution of 1954, these three regions were the federating units, with the ex-Colony of Lagos becoming the Federal Capital Territory. Although the Lyttleton Constitution was not replaced before independence, it

was often amended, most notably in 1959 by the insertion of a full bill of Fundamental Human Rights based largely on the European Convention on Human Rights of 1950.⁶

During the last three colonial years, efforts were made to constitute a cabinet to bring the three regions into a nascent national government through a coalition of the three main political parties: the Northern Peoples Congress (NPC), the National Council of Nigeria and the Cameroons (NCNC), and the Action Group (AG), each of which was based in one region. Between 1954 and 1960, when Nigeria achieved its independence, the three regions gradually established all the organs of self-government and began to exercise legislative, executive, and judicial powers. Britain's final constitutional enactment -- The Nigeria (Constitution) Order in Council, 1960⁷ -- promulgated not only the new Constitution of the Federation of Nigeria, but also the constitutions of the three federating regions.

Early Democratic Constitutions: October 1960 to February 1966

Nigeria has had nine constitutions since 1914. The four colonial documents were promulgated by the British and named after the British governors: Clifford (1922), Richards (1946), Macpherson (1951), and Lyttleton (1954). During the postcolonial era, the country has had five constitutions interspersed with long years of extraconstitutional military rule.⁸

The "Independence Constitution" of 1960 was federal. It provided for an exclusive list of legislative powers for the federal government, plus a concurrent list of shared powers, with the residual powers left to the regions. It instituted British-style cabinet government, with the Queen of England as the head of state. Although Sections 64-7 gave the federal government authority to intervene in the conduct of regional governments under certain conditions, the constitutional potential for centralization was not fully realized because the regional governments were politically and economically stronger than the federal government.

The Constitution provided for an upper chamber (the Senate), with equal representation from the three (later four) regions; however, it was designed only as a cooling chamber. It could not delay legislation for more than six months and thus could not compete with the House of Representatives, the more important legislative house. The same was largely true of second chambers (the houses of chiefs) in the regional governments.

Reflecting a further effort to cope with Nigeria's heterogeneity, the 1960 Constitution mandated balanced regional representation on the Supreme Court. The judges included the chief judge of each region, the chief justice of the federation, and "such number of Federal Judges (not being less than three) as may be prescribed by Parliament." Regional representation also prevailed in the Judicial Service Commission.

The Constitution incorporated fundamental rights to protect individuals as well as the political, civil, cultural, religious, and educational attributes of minority ethnic groups. It also included several institutional schemes to protect minorities. For instance, Section 27 provided for fair representation of ethnic minorities in the public-service systems of the regions.

Additionally, minority fears of victimization led to deregionalization of Nigeria's police forces and their replacement by a single, federal police force controlled by the Central Police Council.

The 1963 "Republican Constitution" was substantially the same as the 1960 document, except that it severed Nigeria's tie to the British monarchy (although Nigeria remained a member of the Commonwealth). This constitution continued arrangements developed in 1960 to pacify minorities and foster a sense of belonging for all Nigerians. Under this constitution, as under that of 1960, each region had its own constitution.

Several factors explain the failure of these first attempts at federal, constitutional democracy. First, many Nigerians believed that the political system was unsuitable because it had a mixture of federalism and Westminster parliamentarianism as well as “winner takes all, loser gets nothing” elections that created bitter battles among the regional political parties seeking to form the federal government. Nigeria’s Westminster system created further problems within the executive. The presence of both a president and a prime minister, combined with a cabinet chosen from members of Parliament, introduced numerous tensions within the executive branch. For instance, the president served as head of state and commander in chief, yet his office was primarily symbolic. The prime minister actually ruled as the chief executive. This created a clash of personalities that generated political upheavals and threatened Nigeria’s unity.

Second, the confrontational parliamentary system hindered nation building because the three political parties -- the NPC in the North, the NCNC in the East, and the AG in the West and Mid-West -- were based in the three regions controlled by the major ethnic groups. The absence both of a truly national party and of a nationally elected chief executive who owed allegiance to the nation and its people rather than to a regionally based ethnic party greatly weakened the nation-state. Third, fragmentation was compounded by the fact that some parties were associated with Islam and others with Christianity. Fourth, the deteriorating political situation was exacerbated by the inefficiency and corrupt tendencies of the political leaders.

Constitutional Change During the First Military Era

The first period of military rule (15 January 1966 to 1 October 1979) created an authoritarian order. The first military leader believed that the solution to Nigeria’s problems lay in abolishing federalism. His first constitutional change was the promulgation of Unification Decree No. 34 of 1966, which ushered in unitary government. This decree was a fatal mistake, for it produced a bloody counter-coup that reintroduced federalism. The Unification Decree also prompted the Eastern Region to secede from the federation in 1967, declaring itself the independent Republic of Biafra. The resulting civil war, which lasted from July 1967 to January 1970, restored the territorial integrity of Nigeria.

To foster stability and reduce ethnic tension, General Yakubu Gowon’s government reorganized the country by creating 12 states in 1967 in place of the previous four regions. Murtala Mohammed created seven more states in 1976. Thus the strong regional governments were replaced by numerous and smaller states. This was intended to undermine monopolization of power as well as to increase the political influence and safety of minority groups. The restructuring also enhanced the federal government’s power vis-à-vis the states.

Under increasing pressure to restore democracy, in 1976 the military established a Constitution Drafting Committee (CDC) comprising a small body of experts charged to prepare a draft constitution for public discussion. This document was then sent to the Constituent Assembly, an elected body, for amendment and ratification.

The Presidential Constitution of 1979

On 1 October 1979 civilians took over the reins of power. The new constitution replaced Nigeria’s cabinet-style of government with a US-style presidential system in an effort to enhance the federal government’s ability to deal with national problems and thereby hold the country together. There was a separation of powers between the three branches of government, an independent judiciary, and complete freedom for the people to choose all their representatives on the basis of universal suffrage with secret ballots. This constitution also sought to reduce ethnic

tensions by affirming the differences among Nigeria's ethnic groups under a robust federal structure and through such concepts as federal character (i.e., affirmative action) and the Fundamental Objectives and Directive Principles of State Policy. Pursuant to local government reforms of 1976, the Constitution established local governments (of which there are now 774) as the third order of government.

The 1979 Constitution provided a good framework for solving the nation's social, economic, and political problems. Yet it lasted only until December 1983 in part because it was frequently abused and violated by politicians. Also, in the early 1980s some state governments, particularly in the Southwest and East, refused to comply with federal-government decisions and used their state-controlled media to attack the federal government. Many states created barriers to appointment to state public services, to admission to state schools, and to intrastate trading for nonresidents in violation of the universality of Nigerian citizenship and the freedoms of movement and residence guaranteed by the Constitution. In many states, those in power excluded opposition parties from policy making, monopolized the bureaucracy, and implemented government programs in a partisan fashion. The situation was aggravated by weak and incompetent national leadership and gross mismanagement of the economy. Corruption assumed alarming proportions, and there was no serious effort to fight poverty. Hence many losers in this corrupt system welcomed military intervention.

Military Rule Redux and the 1989 Partial Constitution

Nigeria, therefore, endured another period of military rule from 31 December 1983 to 29 May 1999. During this period, the military retained parts of the 1979 Constitution, but then a new constitution, formulated with input from a constitutional convention, was partially promulgated by the military in 1989. That is, the 1989 Constitution went into effect for state and local governments only after elections were held for state and local offices in 1991. Thus a transition back to civilian governance had begun by 1992 in the state and local arenas, but implementation of civilian rule for the national government was aborted in June 1993 after a botched presidential election on 12 June. Hence there was no return to civilian democratic rule.⁹

Remarkably, then, during the 45 years following independence in 1960, Nigeria has experienced rule by democratically elected civilian regimes for fewer than 16 years: from 1 October 1960 to 15 January 1966 under Alhaji Sir Abubakar Tafawa Balewa as prime minister and Nnamdi Azikiwe first as governor general and then (after 1963) as president; from 1 October 1979 to 31 December 1983 under President Alhaji Shehu Shagari; and from 29 May 1999 to date under President Olusegun Obasanjo.¹⁰ Nigeria's other rulers -- the military juntas¹¹ -- ruled the country for 30 years. Of course, the perpetrators of Nigeria's military coups and countercoups always predicated their action on an altruistic mission to rescue the country from unruly, corrupt, and inept officials. As a result, under pressure from the international community and civil-society organizations, several of the military regimes eventually embarked on a transition to civilian rule and, as part of this process, set in motion the drafting of a new constitution. Thus three of Nigeria's five postcolonial constitutions (1979, 1989, and 1999) emerged under the tutelage of undemocratic military regimes that arrogated to themselves the authority to midwife the birth of democratic constitutions. Given this postindependence history, it is still common to hear references to Nigeria's "nascent democracy," and infidelity to the Constitution and law is still often excused as being part of "the learning process."

The 1999 Constitution

The current constitution went into effect on 29 May 1999 and was the outcome of a transition process led by the military government of General Abdusalami Abubakar after more than 15 years of failed attempts to restore civilian rule. Two major constitution-making efforts had failed during these years: the short-lived 1989 Constitution that was never implemented fully and a 1995 draft constitution that was abandoned in 1998 after the sudden death of General Sani Abacha, its chief sponsor.¹²

As part of the transition, General Abubakar appointed a Constitution Debate Coordinating Committee headed by Justice Niki Tobi (then a justice of the Court of Appeal but now a justice of the Supreme Court), charging it to organize nationwide consultations on a new constitution and to make a report and recommendations. One idea debated was to base the new constitution on the 1995 Abacha draft, which never came into force, but “Nigerians raised compelling reservations” about the 1995 draft, the most serious of which were that it was “a product of disputed legitimacy” and suffered from a “crisis of authenticity in the public consciousness.”¹³ Similar considerations applied to the 1989 Babangida Constitution. The Tobi Committee found, rather, that Nigerians “were near unanimous that the 1979 Constitution had been tried and tested and, therefore, provides a better point of departure in the quest for constitutionalism in Nigeria.”¹⁴ Making only minor adjustments to the 1979 document,¹⁵ the Tobi Committee recommended adopting the adjusted document as the new constitution. General Abdusalami promulgated the Constitution, with a few amendments,¹⁶ in early May 1999 and handed power to the newly elected civilian regime of President Obasanjo on 29 May.

Thus the Constitution retains presidential government and a federal system with three orders of government, and it addresses various political issues that have divided ethnic and cultural groups. The issue of sharing political power among ethnic groups is addressed by the principle of rotation in executive office. The marginalization of disadvantaged minorities has been ameliorated by the establishment of the Federal Character Commission to enforce equity (i.e., affirmative action or positive discrimination) in public-service appointments. The distribution of wealth has been improved by entrenchment of a new revenue-sharing formula. Surpassing all its postcolonial predecessors, the 1999 Constitution has been in force for more than five years and survived its first major test: countrywide general elections conducted in 2003, which resulted in large turnovers in federal and state legislators and regime changes in many state and local governments.

The 1999 Constitution, like its 1979 predecessor, is a very long document. It includes a brief Preamble, eight chapters divided into 320 sections, and seven schedules, and its standard edition comprises 160 closely printed pages. One reason for this length is that the Constitution provides not only for the governance of the federation but also for that of the states -- separate constitutions for constituent entities having been abolished in the 1979 Constitution -- as well as, more briefly, for local governance. Another reason is that the document provides at considerable length for matters that in other countries are left to ordinary statutes.

The Question of the Constitution’s Legitimacy

The Preamble to the Constitution proclaims: “**We the People** of the Federal Republic of Nigeria, HAVING firmly and solemnly resolved [on various things], DO HEREBY MAKE, ENACT AND GIVE TO OURSELVES the following Constitution” (emphases in the original). Despite this proclamation, in large measure “We the People” resolved on nothing and enacted nothing

because the Constitution was decreed into existence¹⁷ by the departing military government. How, then, can the Constitution claim “legitimacy?”

Its derivation from the 1979 Constitution is one important legitimating factor. As the Tobi Committee concluded, the 1979 Constitution had been “tried and tested.” It was not only in place during the four years of the civilian Shagari administration, but also remained in partial force under the military right up to 1999. The 1979 Constitution, moreover, had been drafted in 1975-76 by a 50-man¹⁸ Constitution Drafting Committee (CDC) appointed by General Murtala Mohammed as part of his program to return the country to civilian rule.¹⁹ The CDC received hundreds of memoranda from individuals and groups from all over Nigeria. Its two-volume report, containing its draft constitution and full discussions of the principles adopted therein, was published in September 1976 and widely distributed.²⁰ This stimulated “The Great Debate”: a year of impassioned public discussion of the draft constitution.²¹ In October 1977 a Constituent Assembly, composed of 230 members, of which a large majority (203) were elected by local government councils, convened in Lagos to debate and amend the CDC draft. The Constituent Assembly, whose debates were public,²² completed its work and adjourned on 5 June 1978. The Constituent Assembly’s draft constitution was presented to the head of state, who promulgated it on 21 September 1978, to take effect on 1 October 1979. Thus the 1979 Constitution reflected a broad agreement among most Nigerians.

The 1999 Constitution’s derivation from the 1979 Constitution, therefore, lends it a measure of legitimacy. However, there is a widely held view that this lineage is tainted by the fact that the Constitution Drafting Committee of 1975-76 was appointed by the military, as was the entire leadership and 20 members of the 230-member Constituent Assembly. Neither of these bodies was fully representative of the whole population; in particular, there were no women on the CDC, and only five women served in the Constituent Assembly -- four of them, incidentally, being among the 20 military appointees.²³ The 1999 Constitution was not put to a plebiscite or ratified by elected bodies in the states but was -- once again -- simply promulgated by military decree. The worst of it, however, is that the constitution that took effect on 1 October 1979 was not the constitution upon which the Constituent Assembly had agreed. Retracting prior assurances, the military government made 17 amendments to the Constituent Assembly’s draft before it was promulgated²⁴ and then made further amendments just before it took effect.²⁵

Consequently, questions about the Constitution’s legitimacy keep recurring. This happened, for instance, almost immediately after the 1999 Constitution came into force. Taking advantage of the new democratic dispensation, the House of Assembly of Zamfara State, under the leadership of the state’s new governor and with the approval of its predominantly Muslim residents, enacted a series of laws implementing new *sharia* (Islamic law) penal and criminal procedure codes complete with such classical punishments as flogging, limb amputation, and death by stoning. New *sharia* courts were created to administer the codes.²⁶ The politicians of other northern Muslim states were pressed by popular demand to follow Zamfara’s lead. Floggings soon started, and the hand of the first thief was cut off;²⁷ calls for stonings followed in due course.²⁸ These widely reported events caused an uproar in the rest of Nigeria and called into question the legitimacy of the 1999 Constitution.

Many non-Muslims saw *sharia* implementation as a violation of the constitutional prohibition of any state religion, a threat to Christians and animists, and “an open, if somewhat disguised, secessionist move by the states concerned.”²⁹ Others contended that the “core North” should be severed from the country and allowed to go its Islamist way alone. Yoruba and Igbo

groups, in particular, called for a “Sovereign National Conference” “to decide whether Nigeria will continue to exist as a nation and on what terms.”³⁰

In the negotiations leading up to the 1960 Constitution, the Northern Region, which “was the only place outside the Arabian peninsula in which the Islamic law, both substantive and procedural, was applied in criminal litigation -- sometimes even in regard to capital offences,”³¹ was persuaded to give up *sharia* criminal law in return for the continuation of Islamic personal and civil law and the establishment of a *sharia* court of appeal for the region. After the Northern Region was divided into ten states with ten *sharia* courts of appeal, Muslim leaders advocated a Federal *Sharia* Court of Appeal under the 1979 Constitution. This was rejected; instead, appeals were routed to the Federal Court of Appeal, which was constitutionally mandated to include at least three justices learned in Islamic personal law. This arrangement was reproduced in the 1999 Constitution. Hence opponents of the enactments of *sharia* criminal codes between 1999 and 2001 saw these enactments as betrayals of settled constitutional compromises and disruptive of national unity.

Union, however, had been “forced on the country in 1914, and ever since then, the question of whether the amalgamation should continue has never been freely and openly discussed among all nationalities.”³² The 1999 Constitution itself was “an imposition by the military which does not represent the wishes and aspirations of the Nigerian people because it was not made by them.”³³ It was said that the Tobi Committee, which had made this constitution, “hardly reflected any awareness of strategies of process-led constitution-making ... It sidetracked serious contentious issues ... and did not attempt to encourage Nigerians to see the document as their own constitution, to be owned, studied, defended, and used to defend democracy ... [T]he structural issues that have bedeviled the country’s ability to enthrone a truly accountable, transparent, and democratic political order [were ignored].”³⁴

Consequently, while the Constitution “is seen as a legal document,” its legitimacy “has been questioned,”³⁵ prompting both the president and the National Assembly to appoint committees to review the document and recommend changes.

Constitutional Principles of the Federation

Fundamental Objectives and Directive Principles of State Policy

One innovation made by the CDC was to incorporate the Fundamental Objectives and Directive Principles of State Policy. This was a departure from the 1960 and 1963 constitutions, which emphasized power and rights but not duties. The objectives, set out in Chapter II of the 1999 Constitution, are long-term goals toward which all governments must work; the directive principles are the paths and policies by which they are to reach these goals. The gist of the provisions is that government power is a trust held on behalf of the people and that sovereignty belongs to the Nigerian people from whom government derives its authority. Powers are given to government for the security and welfare of the people as a whole rather than for the personal aggrandizement of those who wield power. Nigeria is a polity based on principles of democracy and social justice, and government is called upon to ensure the people’s participation in their government.

Federalism

A recurring theme in Nigerian federalism is the federal government’s dominance vis-à-vis the states and local governments. Illustrations include, for example, the exclusive federal monopoly

over the police and armed forces, a sizable list of exclusive federal legislative authority, and federal judicial power to appointment and discipline the judges of both federal and state superior courts of record. A common cliché is that “the federal government’s powers are too sprawling.”³⁶ Thus the Presidential Committee on the Review of the 1999 Constitution (set up in 1999 by Obasanjo’s administration) observed that “[o]ne of the dominant issues which featured in a large number of submissions and representations is the preferred political structure for Nigeria.”³⁷ Noting that there was an overwhelming agreement that Nigeria should be restructured into a true federation, the committee found that “so strong is the concern and agitation for the desired restructuring that Nigerians cannot seem to wait longer for them to witness the emergence of a True Federation with more powers, responsibilities and resources ... decentralized and devolved in favor of the lower tiers of Government.”³⁸ At the same time, and in light of the Biafran secession attempt, there is apprehension that a weak federal centre would be unable to give the country a sense of security and, in the face of centrifugal forces, prevent national disintegration.

What accounts for the centralizing trend? Apart from the apprehension that a weak federal centre could enable secession, there are two major factors. The first is the manner in which the Nigerian federation was created by amalgamation under colonial rule, a process bereft of a credible opportunity for a meaningful negotiation of federal-state relations. The second is the dominance of the polity by the military, which, given its hierarchical command structure, is centrist in orientation. That most of Nigeria’s postcolonial constitutions, including the 1999 Constitution, were born when the military was the self-imposed midwife reinforces this point.

The dilemma that the Nigerian federation continues to grapple with is how, as Lord Bryce posited in the context of federal systems generally, “to keep the centrifugal and centripetal forces in equilibrium, so that neither the planet states shall fly off into space, nor the sun of the central government draw them into its consuming fires.”³⁹

Federal Character and the Interface of Unity and Diversity

The Constitution, therefore, sets out to “actively encourage” national integration as well as the “federal character” of the country. To this end, it prohibits discrimination on the basis of place, origin, sex, religion, status, and ethnic or linguistic associations.⁴⁰ The Constitution obliges the federation to “foster a feeling of belonging and of involvement among the various peoples of the Federation, to the end that loyalty to the nation shall override sectional loyalties.”⁴¹ The Constitution further charges the federal government to reflect, in the conduct of its affairs, the “federal character” of Nigeria and the “need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few States or from a few ethnic or other sectional groups in [the federal] Government or in any of its agencies.” Likewise, the Constitution obliges a state or local government to conduct its affairs “in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the peoples of the Federation.”⁴²

The federal-character principle, first introduced in the 1979 Constitution, is part of the nonjusticiable Chapter II. Nonetheless, the Constitution establishes a Federal Character Commission, with membership drawn from all the states and the federal capital territory, and mandates it to (1) work out an equitable formula, subject to the approval of Parliament, for the distribution of all posts in the public service of the federation and of the states, the armed forces of the federation, the police, other government security agencies, government-owned companies, and state parastatals (e.g., government corporations and enterprises); (2) promote, monitor, and

enforce compliance with the principle of proportional sharing of all bureaucratic, economic, media, and political posts at all levels of government; and (3) take legal-enforcement measures, including prosecution of the head or staff of any ministry or government body or agency that fails to comply with any federal-character principle or formula prescribed by the commission.⁴³

Federal character is a euphemism for ethnic balance -- that is, a basis for building unity in diversity by balancing official appointments among groups. Federal character also affects the allocation of public revenue among the federation's constituent units. This principle is criticized by some people as a sacrifice of merit principles and equal opportunity on the altar of mediocrity and political expediency, but federal character has as its justification the idea of promoting social justice through the redistribution of public revenues among the federation's constituent units and social integration of minorities similar to that effected by the systems of affirmative action in India and the United States.

The Constitution also imposes a duty on the federal government to promote national integration by providing adequate facilities for and encouraging the free mobility of people, goods, and services throughout Nigeria; securing full resident rights for every citizen in every part of Nigeria; encouraging intermarriage among persons of different places of origin and religious, ethnic, or linguistic backgrounds; and fostering a feeling of belonging and of involvement so that loyalty to the nation will override sectional and sectarian loyalties. Other provisions aim to ensure social and economic justice.

The viability of these principles, however, depends on three factors: voluntary compliance by the leaders of government, creation of a public opinion that values these principles and insists on their application, and judicial activism to enforce them when possible.

Status of the Constituent Political Communities

The Federal Republic of Nigeria consists of states of disparate sizes and populations. However, the Constitution establishes symmetrical federalism. A contrary stipulation would have evoked memories of the Northern Region's leverage under Nigeria's previous regional structure and heightened fears of majority domination of minorities. The Constitution does not discriminate between old and new states. Once a new state is created, it has the same powers as the old states.

One prominent theme of Nigeria's federal history has been an urge to subdivide. Agitation for subdividing the original three regions into smaller states began even before independence. One motivation was the sheer size of the Northern Region, which was larger than the other two regions put together, encompassing 75 percent of the country's land area and 60 percent of its population. This imbalance has been described as "[p]erhaps the most astonishing peculiarity of [early] Nigerian federalism"⁴⁴ and gave rise to fears in the other two regions of domination by the North. The other cause was that minority ethnic groups in all regions feared the tyranny of local majorities and thus expressed desires to govern themselves in their own territorial states, which resulted in agitation to subdivide not only the North but the other two regions as well.

In the run-up to independence, as part of the constitutional negotiations then taking place, the British appointed a commission to inquire into this matter, and a lengthy report, still read in Nigeria, was produced.⁴⁵ In the end, the British refused to subdivide the country, but since independence, subdivision has proceeded apace. The first exercise was carried out according to constitutional procedures in 1964, when a new Mid-Western Region was carved out of the West. Wholesale subdivision of the country into multiple states began in 1967, decreed extraconstitutionally by the federal military government of General Yakubu Gowon. All

subsequent state-creation exercises were likewise decreed by military rulers. The table below shows the numbers of states that have resulted from all subdivisions to date.

Today, there are 36 states. A new Federal Capital Territory of Abuja was established in the former Northern Region in 1976, and the capital officially moved there from Lagos in 1991. Agitation for further state creation continues, and there is a very complex provision for it in the 1999 Constitution.⁴⁶ However, the Constitution contains no provision on the admission of new territories as states should such a situation arise, nor is there any provision for the reorganization of states in such a way as to *decrease* their number.

What of secession? Unlike the 1995 Ethiopian Constitution,⁴⁷ which sets out, among other things, to rectify “historically unjust relationships”⁴⁸ and proclaims that “[e]very Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession,”⁴⁹ there is no provision for secession either *within* or *from* the Nigerian federation. Instead, the Preamble to the Constitution expresses the firm resolve of Nigerians to live in unity and harmony as “one indivisible and indissoluble Sovereign Nation.” Section 2(1) fortifies this resolve: “Nigeria is one indivisible and indissoluble Sovereign State to be known by the name of the Federal Republic of Nigeria.”

The significance of these phrases is better appreciated against the background of the civil war, or Biafran War, fought to thwart the secession of the then Eastern Region. Following the country’s first military coup (15 January 1966) and countercoup (29 July 1966), a number of factors, including the killing of many Igbos in northern cities and the mass exodus of Igbos from the North to their homelands in the East, led to the proclamation on 30 May 1967 of a new, independent state -- territorially identical to the Eastern Region -- christened the “Republic of Biafra.” The civil war, fought by the North and West against the East, finally ended on 12 January 1970 with the surrender of Biafra and its reintegration into the federation -- now subdivided, however, into the East-Central, South-Eastern, and Rivers states. There have been no further attempts to secede from Nigeria, but secessionist agitation has not died out. The recent emergence of a Movement for the Actualization of the Sovereign State of Biafra (MASSOB) underscores the imperative need for a federal system conducive to the symbiotic interface of centrifugal and centripetal forces.

Unlike in the United States and several other federal polities, there is only one constitution in Nigeria. The constituent polities do not have their own constitutions. The federal Constitution sets out in separate parts of the same chapters provisions relating to the federal and state governments, with the exception of miscellaneous and transitional provisions common to both orders of government, which are dealt with in the same sections, as is the case with such issues as citizenship, the Fundamental Objectives and Directive Principles of State Policy, and fundamental rights. By contrast, the 1960 and 1963 Constitutions made provisions for separate regional constitutions. The 1976 Constitution Drafting Committee attributed its preference for a single, national constitution to the convenience of drafting in light of the number of states, 19, in existence at the time. The centrist posture of the Constitution reinforces the views of critics who fault the structure of the Nigerian federation and crave a return to the arrangement that existed under the 1960 and 1963 Constitutions.

Local Government

Section 7(1) of the current Constitution, like the 1979 document, guarantees a system of local government by “democratically elected local government councils.” However, the second component of Section 7(1) makes the “establishment, structure, composition, finance and

functions” of local governments dependent on state law. Furthermore, the Constitution makes it possible for state governments to cripple local government councils financially by routing the amount of money standing to the credit of local governments in the Federation Account through a State Joint Local Government Account rather than directly to local councils.⁵⁰ This arrangement adversely affects the financial viability of most councils. Some state governors make inexplicable deductions or unduly delay the release of funds from the joint accounts to local-government chief executives whom they regard as political adversaries. Ironically, President Obasanjo, whose earlier military administration undertook a major reform of the local-government system in 1976, the basic tenets of which found expression in the 1979 Constitution and then again in the 1999 Constitution, became so disenchanted with the performance of local government that he set up a Presidential Technical Committee to examine the desirability of retaining local government as the third order of government. He believes that inefficiency and high costs bedevil the system.

As of 2004 the Constitution recognized 768 local-government areas in addition to six municipal-area councils (in respect of the Federal Capital Territory of Abuja), thus making the total 774 local government councils. There is a raging controversy (involving several ongoing litigations) as to who, between the federal government and the states, has the final say over the creation of new local-government areas.⁵¹

The Allocation of Powers

In allocating powers, the Constitution distinguishes between an exclusive legislative list and a concurrent legislative list. The federal government has exclusive authority to exercise the former powers, while both the federal and state governments have concurrent authority to exercise the latter to the extent prescribed in the Constitution. However, states have exclusive legislative authority in residual matters.⁵²

The exclusive list consists of as many as 68 items. When compared with the 12 items on the concurrent list, it provides the critics of Nigeria’s federal system with another weapon. The matters exclusive to the federal government include, among others, defence; foreign affairs; extradition; police and other government security services; arms, ammunitions, and explosives; prisons; evidence; currency, coinage, and legal tender; taxation of income, profits, and capital gains; stamp duties; mines and minerals (including oil fields, oil mining, geological surveys, and natural gas); copyright; aviation; bankruptcy and insolvency; banks, banking, bills of exchange, and promissory notes; trade and commerce; regulation of political parties; and creation of states.

Both the federal government and the states can enact laws on any matters found on the concurrent list. This list deals with, among other things, the allocation of revenue; antiquities and monuments; archives; tax collection; electoral law; electric power; exhibition of cinematographic films; industrial, commercial, and agricultural development; scientific and technological research; statistics; trigonometric, cadastral, and topographical surveys; and university, technological, and postprimary education. The executive power is similarly distributed between the two orders of government, and is normally coextensive with the concurrent legislative powers.

Pursuant to concurrent powers, if a law made by a state government conflicts with a law “validly made” by the federal government, the latter prevails. In the words of Section 4(5), the former “shall to the extent of the inconsistency be void.” Where, however, a law made by a state is not necessarily inconsistent with a validly enacted federal law but relates to a subject matter in respect of which the federal law has, to use a common parlance, covered the field, the state

legislation is not necessarily void but is merely “in abeyance,” and if, for any reason, the federal law is repealed, the state legislation “is revived and becomes operational.”⁵³

Apart from normal administrative and political-party mechanisms, there are no explicit constitutional mechanisms designed to promote consensual rather than hierarchical resolution of conflicts between the federal government and the constituent governments. However, such conflict resolution is implicit in the establishment and composition of certain bodies, such as the National Council of States and the Federal Character Commission, whose membership consists of federal and state representatives.

Conflicts of Power and Jurisdiction between the Federal Government and the States

After years of prolonged military rule, Nigeria’s current democratic experience has been beset with intergovernmental conflicts on issues ranging from the authority to prescribe the tenure of local government councils⁵⁴ to the authority to enact legislation on corruption.⁵⁵ However, the Constitution does not expressly employ any mechanisms to forestall the development of power conflicts between the federal government and the states.⁵⁶

The Constitution vests the Supreme Court with the original jurisdiction, to the exclusion of any other court, to determine any legal dispute between the federation and a state or between states. Because the Supreme Court is the court of last resort, this expedites litigation because such cases do not have to wind their way up through the normal, often slow, judicial hierarchy.

Federalism and the Structure and Operation of Government

System of Government

The current Constitution, like its 1979 precursor, opts for a US-style presidential system. The CDC, which played a significant role in making the 1979 Constitution, preferred the presidential system on the grounds that the separation of the head of state from the head of government under the parliamentary system involved a division between real authority and formal authority that was “meaningless in the light of African political experience and history” and was prone to “a clash of personalities and of interests, a conflict of authority and an unnecessary complexity and uncertainty in governmental relations.”⁵⁷

Responding to apprehension that an executive presidency would concentrate too much power in the hands of one person, the CDC asserted that “the ultimate sanction against usurpations of power is a politically conscious society jealous of its constitutional rights to choose those who direct its affairs.”⁵⁸ The CDC did not say, however, whether a “politically conscious society” existed in Nigeria or was on the verge of emergence. Interestingly, Nigeria’s recent experience with presidential government is reigniting debate about the propriety of the presidential, as against parliamentary, government. Charges of civilian dictatorship predicated on a deliberate and systematic weakening of other orders and branches of government are being levelled against President Obasanjo. An attempt to impeach the president for contempt of the legislature and constitutional precepts was averted only after the intervention of the ruling Peoples Democratic Party and elder statesmen, such as former President Shehu Shagari and his military counterpart, Yakubu Gowon. Incidentally, President Obasanjo, a retired army general and Nigeria’s military head of state between February 1976 and September 1979, bequeathed the 1979 presidential Constitution to Nigerians. Whether Obasanjo’s sometimes vilified style of administration stems from his military background or from the enormous powers the Constitution vests in the presidency, or both, is uncertain, but the domination of politics by

retired military and paramilitary officers is one of the challenges facing Nigeria's efforts to enthrone democratic constitutionalism and federalism.⁵⁹

Separation of Powers

A separation of powers is prominent in Nigeria's Constitution. Sections 4, 5, and 6 enumerate the respective powers of the legislative, executive, and judicial branches. However, in light of provisions on checks and balances, the Constitution does not engender a "pure" separation of powers because each branch has some influence over the others. For example, the legislature checks the executive through its oversight functions, the impeachment weapon, and legislative confirmation of certain executive nominees such as ministers, commissioners, and ambassadors. The executive initiates bills and has the prerogative of approving or vetoing a bill passed by the National Assembly. Both the legislature and the executive play important roles in the appointment and discipline of judges, and the judiciary has the power of *Marbury*-style judicial review over both legislative and executive actions.⁶⁰

However, the separation of powers between the executive and legislature does raise potential problems. Unless these two branches agree on policy, a stalemate develops -- something that has occurred already. Unless there are mechanisms for consensus building and cooperation, as well as a tolerant rather than competitive attitude, it is difficult for either branch to achieve not only its own goals, but also important national goals.

Federal Legislature

The Constitution establishes a bicameral legislature called the National Assembly, consisting of a lower chamber (House of Representatives) and an upper chamber (Senate). Each Nigerian state is divided into three senatorial districts, with each electing a senator. The federal capital territory has one senator (unlike Washington, DC, which has no senator). The Senate, therefore, consists of 109 senators. Thus, as in the US Senate, each state is equally represented in Nigeria's Senate; however, unlike in the United States, where each senator is elected by his or her entire state electorate, Nigeria's senators are elected from districts within their state. For the House, the Constitution prescribes 360 federal constituencies "of nearly equal population as far as possible," with each constituency electing one House member. Hence, like the differential state representation in the US House of Representatives, the states are not equally represented in Nigeria's lower chamber. The size of a state's representation in the House depends on the size of its population.

The Constitution mandates the National Assembly to make laws for the "peace, order and good government" of the federation or for any part thereof with respect to any matter included in the exclusive legislative list set out in Part 1 of the Constitution's Second Schedule, but subjects the exercise of the Assembly's powers to "the jurisdiction of courts of law and of any judicial tribunals established by law." Accordingly, the Constitution precludes the legislature from enacting any law "that ousts or purports to oust the jurisdiction" of such judicial bodies. The legislature is further prohibited from making, in relation to any crime, a law that has a retroactive (*ex post facto*) effect. The Assembly, however, can make laws on any matter on the concurrent legislative list and on any other matter with respect to which, under the Constitution, it is empowered to make laws.

In addition, when a state house of assembly is unable to perform its functions by reason of a situation prevailing in that state, such as where the legislature is crisis-ridden, the National Assembly can make laws for that state "until such time as the House of Assembly is able to

resume its functions.”⁶¹ In recent times, the National Assembly threatened to invoke this power in some states, especially in the East, where power tussles paralyzed the operation of their state houses of assembly. This provision, however, does not authorize the federal legislature to impeach a state governor.

When there is a conflict between a valid federal law and a state law, the state law is rendered void up to the extent of its inconsistency with the federal law. As a general rule, the National Assembly does not have a concurrent approval, veto, or amendment power over legislation enacted by the state governments and vice versa. However, this rule does not extend to legislation respecting the creation of new states and local governments, boundary adjustments, the domestication of certain treaties, and amendment of the Constitution.⁶²

Federal Executive

Federal executive power is vested in the president, who has the discretion to exercise such power either directly or through the vice president, ministers of the federal government, or officers in the federation’s public service. The president’s executive power extends to the execution and maintenance of the Constitution, all federal legislation, and all other matters with respect to which the National Assembly has power to make laws. The president’s powers are awesome when considered in light of the broad and expansive nature of the exclusive legislative list although these powers must be exercised in accordance with the Constitution and laws enacted by the National Assembly.

The president also participates in certain aspects of law making. The president’s assent is required for a bill passed by the Assembly to become law,⁶³ although the Assembly can override a presidential veto by a two-thirds majority. The president’s legislative role may take the form of legislative initiative as well. Under Section 81 of the Constitution, the president also can cause estimates to be laid before and acted upon by the legislature. The president has authority under Section 315 to modify by way of addition, alteration, omission, or repeal any existing law in order to bring it into conformity with the Constitution.

Consistent with the federal-character principle, the Constitution obliges the president to appoint to his Cabinet at least one minister from each state of the federation. The constituent polities, as such, do not play any role in electing the president because the outcome of presidential elections is determined by majority votes. However, to win, a presidential candidate must garner not less than one-quarter of the votes cast at the election in at least two-thirds of the states of the federation and the federal capital territory.

Federal Judiciary

The Constitution establishes a three-tier hierarchy of federal courts. The bottom consists of the courts of the federal capital territory and the Federal High Court. The intermediate court, the Court of Appeal, is the second tier, while the Supreme Court, which is the court of last resort, constitutes the top tier.

The Supreme Court is primarily an appellate court. However, it exercises original jurisdiction, to the exclusion of any other court, in respect of matters either between a state and the federal government or between states. Consistent with the power of judicial review, and in light of the principle of the supremacy of the Constitution, the Supreme Court and other superior courts of record can declare a federal law or any other law to be unconstitutional and, therefore, null and void.⁶⁴

The Supreme Court can hear reference cases involving “a substantial question of law” relating to the “interpretation or application” of the Constitution.⁶⁵ Through this “leap frog” procedure, the higher court gives its opinion on the question and provides such directives as it deems fit to the court below, but the court does not give advisory opinions to the federal executive and/or to the federal legislature and/or to the governments of the constituent polities.

The Supreme Court justices are appointed by the president on the recommendation of the National Judicial Council, which in turn acts on the advice of the Federal Judicial Service Commission. The constituent polities are represented in the federal judiciary through the federal-character principle, but the Constitution does not mandate, as is the case with ministerial appointments, a specific minimum from each state.

The judiciary occupies a powerful position. Its powers extend, notwithstanding anything contrary to the Constitution, to all inherent powers and sanctions of a court of law. Judicial powers extend also to all legal matters arising between persons or between government (or authority) and any person and to all actions and proceedings for determining any question as to the civil rights and obligations of a person. However, the Fundamental Objectives and Directive Principles of State Policy are not subject to judicial enforcement. Furthermore, judicial power does not extend to any actions or proceedings relating to any existing law made on or before 15 January 1966 (the date of Nigeria’s first coup) for determining any issue or question as to the jurisdiction of any authority or person to have made any such law.

With reference to customary or religious courts, the Constitution establishes appellate *sharia* and customary courts for the federal capital territory and permits any state “that requires it” to establish such courts. Individuals are at liberty to choose between regular courts and customary courts so long as both courts possess jurisdiction over the subject matter. *Sharia* courts have jurisdiction only over Muslims, but no constitutional stipulation precludes the parties to a case, even if both are Muslim, from choosing regular courts. In practice, however, opting out of *sharia* courts is rare because many Muslims fear that it could be construed as infidelity to the Islamic faith. Appeals of decisions rendered by *sharia* and customary courts of appeal go to a federal Court of Appeal, whose composition, as a matter of constitutional stipulation, includes at least three justices learned in Islamic personal law and at least three justices learned in customary law. Thereafter, the final appeal lies with the Supreme Court.

Institutions of the Constituent Polities

The states’ institutions generally resemble those of the federal government because they are mandated by the federal Constitution. For instance, subject to respective powers, the institutional arrangements for the state executive branch are, with the necessary adjustments, those at the federal level. That is, after vesting powers in the federal president, the Constitution vests powers in the state governors.

The same is true of each state’s judiciary to the extent that the state system is hierarchical. However, state courts, other than each state’s high court (which is established by the Constitution), are established by state law. These include state *sharia* and customary courts of appeal (if a state chooses to create them), magistrate or district courts, and customary or area courts. State high courts have both original and, to a limited extent, appellate jurisdiction. However, no state has a court of appeal or a supreme court. Cases from state courts eventually wind up, on appeal, in a federal Court of Appeal or in the Supreme Court.

Unlike the National Assembly, the Constitution establishes a unicameral house of assembly for each state. Like the National Assembly, each state legislature is subject to the

jurisdiction of the courts and judicial tribunals established by law, and no state law can oust the jurisdiction of a court of law or a judicial tribunal established by law. Also, like the National Assembly's role in approving certain presidential appointments, each state house of assembly collaborates with its governor in the appointment of persons to key executive and judicial posts.

Section 7 of the Constitution guarantees a system of democratically elected local-government councils. Subject to Section 8, each state must ensure their existence under a law that provides for the establishment, structure, composition, finance, and functions of such councils. The Fourth Schedule provides for the main functions of local government councils. A council has the authority to make bylaws and regulations with respect to local functions stated in Schedule 4. Local government arrangements do vary somewhat from state to state because such matters are the subject of state regulation. Otherwise, however, local governments have no judicial branch.

Interstate Relations

The Constitution does not specifically address relations among the constituent polities with respect to such matters as full faith and credit, mutual recognition of each other's legal acts, or the service and/or enforcement of court processes. Such matters are regulated by the laws of the respective states.

In civil suits, jurisdiction is determined by the nature of the subject matter (e.g., a contract, tort, or land matter) and/or by the residence of the litigants. However, in criminal cases, jurisdiction is determined by the place of the commission of the crime. This rule is subject to the proviso that breaches of the provisions of the 1949 Geneva Conventions are, by the provisions of the Geneva Conventions Act,⁶⁶ subject to the jurisdiction of the courts in the federal capital territory, irrespective of the nationality of the accused or the place of the alleged crime's commission.

Fiscal and Monetary Powers

Taxation

The federal and state governments have exclusive powers to levy taxes in their respective spheres; there is no concurrent power of taxation. The federal government has broad and elastic taxation powers. For instance, corporate income taxes, customs and excise duties, export duties, stamp duties, and taxes in respect of oil and solid minerals (exclusive ownership of which is vested in the federal government)⁶⁷ fall under the exclusive legislative list, thus leaving the states with a residual taxation power that provides only limited room for them to generate their own financial resources.

Nonetheless, it is important to underscore that all revenues collected by the federal government do not belong to the federal government per se but are paid into a distributable pool account, known as the Federation Account (discussed below). In terms of transparency and accountability, the Constitution establishes a Revenue Mobilization Allocation and Fiscal Commission, with membership drawn from each state of the federation and from the federal capital territory. The commission's mandate includes "monitor[ing] the accruals to and disbursement of revenue from the Federation Account."⁶⁸ Thus the proceeds of many federal taxes are either given exclusively to the states (i.e., capital-gains tax, personal income tax, including taxation of dividends, and stamp duties on documents or transactions) or shared between the federal, state, and local governments (e.g., value-added tax).

The states do have power to raise revenue from, among others, a land tax, land registration fees, estate duties, and license fees. Also, whereas the federal government can levy a sales tax on interstate trade and commerce, the power to legislate on intrastate trade and commerce is vested in state governments.⁶⁹ Local governments have very few fiscal powers. Their revenue sources are limited, among others, to entertainment taxes, motor-park duties, property taxes, and trading and marketing license fees.

The Constitution empowers the National Assembly, in exercise of its powers to impose certain specified taxes or duties, to provide that the collection of such taxes or duties be “carried out by the Government of a State or other authority of a State,” with a proviso that such taxes or duties not be levied on the same person by more than one state.⁷⁰ The Constitution also obligates each state to pay to the federation, in respect of each financial year, “an amount equal to such part of the expenditure incurred by the Federation during that financial year for the purpose of collection of taxes or duties which are wholly or partly payable to the State ... as is proportionate to the share of the proceeds of those taxes or duties received by the State in respect of that financial year.”⁷¹

The Constitution contains no explicit provisions on tax harmonization, coordination, cooperation, or competition among the states and/or local governments. However, there is a statutory scheme under which provision is made for a Joint Tax Board. This board, with membership drawn from the federal and state boards of internal revenue, meets periodically, affording the members the opportunity to exchange ideas on best practices; makes proposals for the reform of tax laws; and, in appropriate cases, recommends uniform rates for adoption by the relevant authorities.

Borrowing

The federal and state governments can borrow money on capital markets. The Constitution does not limit the federal government’s borrowing authority, but states need the approval of the federal government to secure foreign loans. An emerging trend has been for states to issue bonds on capital markets. However, critics charge that the federal government has not exercised sufficient supervision over states unable to pay off their bonds. As of mid-2004, 18 states were practically bankrupt and unable to fulfil Irrevocable Standing Payment Orders (ISPOs) that they had signed with the federal government. ISPOs allow the federal Ministry of Finance to deduct specified percentages from states’ statutory allocations of federal revenue as indemnity against defaults on bond payments.

The Constitution neither requires nor encourages the federal government to pay the debts of state and/or local governments when these governments fail or refuse to pay their debts. However, the Constitution envisages the financial viability of the federal government and enjoins it to make grants to a state to supplement the revenue of that state in such a sum and subject to such terms and conditions as may be prescribed by the National Assembly.

Allocation of Revenues

The Constitution establishes a Federation Account into which, with a few specified exceptions, “shall be paid all revenues collected by the Government of the Federation.”⁷² The Constitution further establishes a fiscal-equity commission, the Revenue Mobilization Allocation and Fiscal Commission, and charges it to, among other things, “review, from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities.”⁷³ Consistent with its mandate, the commission advises the president on proposals for revenue

allocation. Upon receipt of such advice, the president tables it before the National Assembly, which in turn prescribes a revenue-allocation formula, taking into consideration allocation principles such as population, equality of states, internal revenue generation, land mass, terrain, and population density.

The federal government has exclusive ownership of oil and solid-mineral resources. However, petroleum -- the mainstay of Nigeria's economy -- is found mostly in the South. The politics involved in controlling and allocating revenues from natural resources (especially oil) is highly contentious. The Constitution ameliorates the plight of the states from which such resources are extracted by requiring that a minimum of 13 percent of the revenue accruable to the Federation Account from natural resources extracted from any state be returned to that state. This so-called derivation principle "shall be constantly reflected in any approved formula." Whereas the current Constitution otherwise leaves the determination of the exact derivation percentage to the National Assembly, the 1960 and 1963 Constitutions had prescribed 50 percent in favour of regions from which such resources were extracted. A recent attempt by the federal government to deprive Nigeria's coastal states of revenue from offshore natural resources, particularly on the basis of the derivation principle, received judicial backing;⁷⁴ however, the government eventually opted for a political solution pursuant to which the National Assembly passed an executive bill abolishing the onshore-offshore distinction.⁷⁵

Revenues accruing to the Federation Account are distributed among the federal, state, and local governments. However, the allocation formula tilts heavily in favour of the federal government. The formula, crafted under General Babangida's rule, prescribes 48.5 percent for the federal government, 24 percent for state governments, 20 percent for local governments, and 7.5 percent for special funds. Following the Supreme Court's invalidation of the percentage prescribed for special funds,⁷⁶ President Obasanjo invoked his power of adaptive legislation⁷⁷ and added this percentage to the federal government's share, thus making a total of 56 percent in favour of the federal government.⁷⁸ However, pursuant to the Constitution, arrangements have also been made for statutory grants-in-aid and loans from the federal government to the states.

The issue of fiscal federalism remains contentious, with some reformers, particularly from the South, clamouring for "resource control" by the states. The Presidential Committee on the Review of the 1999 Constitution reports that "the twin issues of derivation formula and resource control stand out and constitute the greatest test of the political will ... to effect the desired restructuring of the federation so that justice is done to all stakeholders in the Nigerian nation."

Spending of Revenues

Subject to budget limitations that might be imposed by an appropriation act, the Constitution places no limits on the power of the federal government to spend revenues for any or various legal purposes of its own choice. In like manner, the Constitution does not place any limits on the power of the constituent governments to spend own-source and/or grant-in-aid revenues for various legal purposes of their own choice unless, in the case of grants-in-aid, the granting authority prescribes otherwise. Similarly, the Constitution does not limit the authority of the states to spend revenues accruable to them from the Federation Account or otherwise direct how or where such funds are spent. Spending rules for local governments are prescribed by state legislation.

The Constitution assigns monetary policy exclusively to the federal government. A central bank, the Central Bank of Nigeria, was created by statute.

In summary, the division of policy and fiscal powers is heavily weighted toward the national government at the expense of the states. This distribution has prompted calls for devolution and greater state autonomy and also raised the possibility of amending the Constitution to redress the imbalance. However, a number of factors are said to justify a strong national government. The first is the need for national unity. When regions are more powerful than the centre, divisive forces take advantage of the federal government's weakness. Second, the uneven development of regions and peoples is often said to require a strong federal government able to protect the weak and assist less-developed jurisdictions. Third, a strong federal government is said to be necessary to meet external threats. Fourth, a strong federal government is said to be needed to develop the nation's resources and promote economic development.

Foreign Affairs and Defence Powers

Power in respect of foreign affairs is exclusive to the federal government, and states cannot belong to international or supranational organizations. However, a federal bill that seeks to domesticate an international treaty with respect to matters not included in the exclusive legislative list requires ratification by a majority of all the state houses of assembly.

Defence, too, is an exclusive federal competence. The constituent polities do not possess their own militias or other military forces. However, some states, such as Anambra, have established vigilante groups whose constitutionality is the subject of controversy. The Constitution explicitly provides for civilian control of all armed forces, to the extent that the president is the commander in chief of the Nigerian Armed Forces. The president cannot, without prior legislative approval, deploy any member of the armed forces on combat duty outside Nigeria unless "he is satisfied that national security is under imminent threat or danger."⁷⁹ The Constitution explicitly provides for conscientious objection to military service in the specific context of its delineation of the scope of the right to human dignity.⁸⁰

The Constitution does not provide for intergovernmental consultation in foreign affairs or defence. Additionally, the development of supranational institutions (e.g., the African Union, of which Nigeria is a member) has not affected the constitutional allocation of foreign affairs and/or defence powers or otherwise compelled constitutional change to provide for intergovernmental consultation in foreign affairs and/or defence, representation of constituent governments in external negotiations, or external-relations authority (e.g., a limited treaty power) for the federation's states or local governments.

Citizenship

Chapter III of the Constitution, which is devoted to citizenship, establishes three categories of citizens: by birth (on the basis of ancestral blood ties), by registration (restricted to non-Nigerian female spouses of Nigerian men, which, if literally construed, excludes non-Nigerian male spouses of Nigerian women), and by naturalization (without restrictions but subject to the fulfilment of certain specified conditions relating to domicile and good behaviour). The Constitution recognizes dual citizenship (i.e., Nigerian citizenship and that of a foreign country), but in an effort to emphasize the oneness of Nigerians, it does not recognize or authorize dual citizenship in terms of national and constituent-polity citizenship, such as dual federal and state citizenship in the United States.

Citizenship is determined by the federal government, with a proviso that the grant of an application for citizenship by naturalization requires certification by the governor of the state

where the applicant proposes to be resident that the applicant “is acceptable to the community” and “has been assimilated into the way of life of Nigerians in that part of the Federation.”⁸¹ An immigrant wishing to obtain citizenship applies to the federal government through the Nigerian Immigration Service. Section 32 of the Constitution authorizes the president to make regulations prescribing all matters for carrying out or giving effect to citizenship and for granting special immigrant status to the non-Nigerian spouse of a Nigerian citizen.

Voting, Elections, and Political Parties

The Constitution established an Independent National Electoral Commission (INEC) that conducts all federal and state elections in Nigeria. Local-government elections are conducted by state independent electoral commissions (SIECs). Registration of eligible voters is the exclusive responsibility of the INEC. The Constitution makes provisions for voter qualifications and elections based on universal adult suffrage, but the details (including a minimum voting age of 18) are set out in Electoral Act 2002.

Nigeria has a multiparty system. As of 2004 there were 30 registered political parties, which are regulated by the INEC. An attempt to constrict the political space, through the imposition of stringent registration requirements, was successfully challenged in court.⁸² However, in a deliberate move to discourage past practices whereby most political parties confined themselves to their regional cocoon or were mono-ethnic or mono-religious, the Constitution renders ineligible for registration as a political party any association whose name, symbol, or logo contains “any ethnic or religious connotation or gives the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria.”⁸³ Parties are barred from holding or possessing any funds or other assets outside Nigeria and are not entitled to retain any funds or assets remitted or sent to them from outside Nigeria.⁸⁴ There is no provision for independent candidates. The Constitution does not exclude anyone from voting because of gender, race, ethnicity, religion, or conviction for a crime. However, non-Nigerians, whether resident in the country or not, are ineligible to vote.

Protection of Individual and Communal Rights

Constitutional entrenchment of human rights in Nigeria dates back to the recommendation of the Willink Commission of 1958, which was appointed by the colonial government to inquire into the fears of minorities and ways of allaying these fears. The 1999 Constitution incorporates four categories of rights.

Category One includes personal freedoms, such as the right to life, human dignity (e.g., no torture, inhuman or degrading treatment, slavery, and/or forced labour); personal liberty; and guarantees with respect to the privacy of citizens, their homes, correspondence, and telephone and telegraphic communications.

Category Two includes political and moral rights, such as freedom of thought, conscience, expression, and religion (including freedom to change one’s beliefs and to worship, teach, and practice one’s religion). Section 38 forbids the imposition on a person attending an education institution of a requirement to receive religious instruction or to participate in a religious denomination that is not one’s own or of which one’s parents or guardians do not approve. These rights are in furtherance of Section 10, which prohibits a state religion. Freedom of the press is protected, along with the right to assemble freely and peacefully and to form or belong to any political party, trade union, or other association, the right to move freely throughout Nigeria and to reside in any part of Nigeria, and freedom from discrimination.

Category Three rights pertain to criminal and judicial proceedings, including a fair hearing by a court within a reasonable time. Category Four refers to property rights, including provisions that eminent domain be exercised only with equitable compensation to property owners.

An omnibus derogation clause validates any law that is “reasonably justifiable in a democratic society -- (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedoms of other persons.”⁸⁵ These rights are guaranteed against the federal government, the constituent governments, and/or private abridgment and are enforced primarily by the judiciary, especially by federal and state high courts. These rights apply to Nigerians as well as to non-Nigerians, except where, as is the case with the freedom of movement and the right to nondiscrimination, the rights are, in certain specific contexts, restricted to “every citizen.” Constituent governments, individually or collectively, cannot opt out of any or all provisions of the fundamental-rights provisions. However, nothing stops constituent governments from enacting specific statutes *in furtherance* of the constitutional human-rights regime. For instance, some states have outlawed female genital mutilation or other harmful religious or traditional practices (e.g., obnoxious widowhood rites).

The Constitution does not guarantee economic, social, and cultural rights. At best, what would have constituted the fulcrum of these second-generation rights is christened the “Fundamental Objectives and Directive Principles of State Policy.” But these are nonjusticiable.

International human-rights instruments have no force of law unless they are domesticated through specific legislation. The African Charter on Human and Peoples’ Rights, for instance, has been domesticated into Nigerian law⁸⁶ and has been the subject of several lawsuits.⁸⁷ Human-rights provisions, whether constitutional, statutory, or domesticated, are enforceable through federal and state high courts. A National Human Rights Commission complements the enforcement regime.

Constitutional Change

Amendment or review of the Constitution is primarily a legislative responsibility. The Constitution prescribes a two-step amendment process, involving both the National Assembly and state houses of assembly.⁸⁸ There is no referendum requirement in the Constitution amendment or review process.

No provision of the Constitution is immune from amendment. As a general rule, a proposal for an amendment requires the votes of not less than a two-thirds majority of the members of each house of the National Assembly. However, any proposal to amend sections that (1) prescribe the amendment procedure, (2) relate to the creation of new states, boundary adjustment, or the creation of new local-government areas, or (3) contain fundamental rights requires the votes of not less than a four-fifths majority of the members of each house of the National Assembly. In either case, the proposal must be approved by resolution of the houses of assembly of not less than two-thirds of all the states.

Thus far, no provision of the 1999 Constitution has been amended. However, shortly after assuming office in 1999, President Obasanjo, in response to criticisms of the Constitution and agitation for its review, constituted an all-party Presidential Committee on the Review of the 1999 Constitution.⁸⁹ The committee identified 17 major issues that should engage the amendment process.⁹⁰ These include illegitimacy of the Constitution, the framework for defending the Constitution against military adventurism, the structure of the federation,

devolution of powers, the local-government system, the interface of state and religion, revenue allocation, and “genderizing” the Constitution’s language. A National Assembly Joint Committee on the Review of the 1999 Constitution made similar findings. A draft bill to amend the Constitution in terms of some of these issues was being debated by the National Assembly in 2004. However, critics, such as the Citizens’ Forum for Constitutional Reform (a broad coalition of nongovernmental human-rights and democracy organizations), have faulted the process, alleging that it is not sufficiently guided by principles of inclusiveness, diversity, participation, transparency, openness, autonomy, accountability, and legitimacy, which, they contend, are key to any review of the Constitution in terms of producing a people’s constitution.⁹¹

Conclusion

Nigeria’s Constitution emerged under circumstances that constrain its capacity to respond adequately to the challenges of federalism and constitutionalism that bedevil the polity. Decades of military dictatorship have led to a centrist federal structure and “the curtailment of opportunities for political institutionalization and democratic consolidation.”⁹² An appraisal of the Constitution since 1999 must reckon with these realities, as well as with its still-young lifespan. Neither the legitimacy of federal constitutionalism nor the practice of federal constitutionalism is yet firmly entrenched in Nigeria.

The country continues to grapple with military predominance, and while a constitutional framework for bolstering the defence of democracy is important, there is a broad public consensus that the best recipe against a military coup is good governance. Civilian officials must act properly in defence of democracy and in demonstration of its superior performance over other forms of government. Nigeria, which is ranked as one of the world’s most corrupt countries, must shed its corruption and foster economic development, modernization, and social justice.

Properly utilized, the ongoing constitutional review process could afford “We the People” the opportunity to embark on candid dialogue and negotiation on the thorny issues that hold the key to the success of Nigeria’s democratic odyssey and to the very existence of the Nigerian federation. The active involvement of civil-society organizations portends a good omen and gives a sense of the hopefully positive direction of things to come.

¹ The website of the Nigerian government (<http://www.nigeria.gov.ng>) estimates the country’s population at 120 million; the *World Fact Book* estimated Nigeria’s population in July 2003 at 133,881,703 (<http://www.odci.gov/cia/publications/factbook/print/ni.html>). A national census is scheduled for 2005.

² See also Rotimi T. Suberu, *Federalism and Ethnic Conflict in Nigeria* (Washington, DC: United States Institute of Peace Press, 2001) and Okwudiba Nnoli, *Ethnicity and Development in Nigeria* (Aldershot, UK: Ashgate, 1995).

³ J. Isawa Elaigwu and Erim O. Erim, eds, *Foundations of Nigerian Federalism: Pre-Colonial Antecedents*, 2nd ed. (Jos: Institute of Governance and Social Research, 2001).

⁴ However, in a recent land and maritime dispute between Cameroon and Nigeria, the International Court of Justice adjudged part of the Lake Chad area, whose ownership Cameroon claimed, to be part of Nigerian territory. The court adjudged certain other parts of the Lake Chad area and the Bakassi Peninsula, sovereignty over which Nigeria claimed, to be part of Cameroon. See *Case Concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria: Equatorial Guinea Intervening)*, 10 October 2002, General List No. 94. The judgment is obtainable at: http://www.icj-cij.org/icjwww/idocket/icn/icnjudgment/icn_ijudgment_20021010.PDF.

⁵ See also J. Isawa Elaigwu and G.N. Uzoigwe, eds, *Foundations of Nigerian Federalism: 1900-1960*, 2nd ed. (Jos: Institute of Governance and Social Research, 2001).

⁶ Nigeria (Constitution) (Amendment No. 3) Order in Council, 1959, effective 24 October 1959.

⁷ 1960 No. 1652, effective 1 October 1960.

⁸ See also J. Isawa Elaigwu and R.A. Akindele, eds, *Foundations of Nigerian Federalism: 1960-1995*, 2nd ed. (Jos: Institute of Governance and Social Research, 2001).

⁹ Ladipo Adamolekun, ed., “Federalism in Nigeria: Toward Federal Democracy,” *Publius: The Journal of Federalism* 21 (Fall 1991): entire issue.

¹⁰ This excludes two years of limited civilian rule between 1991 and 1993, when elected officials ran state and local governments while General Ibrahim Babangida remained the country’s military head of state. After his program for transition to civil rule was aborted in June 1993, Babangida resigned in favour of an interim national government headed by Chief Ernest Shonekan, a civilian. Shonekan’s brief tenure was terminated on 17 November 1993 by yet another military take-over, this time led by General Sani Abacha.

¹¹ Led by General Aguiyi Ironsi (January to July 1966, when Ironsi was assassinated); General Yakubu Gowon (July 1966 to July 1975, when Gowon was deposed); General Murtala Mohammed (July 1975 to February 1976, when Mohammed was assassinated); General Olusegun Obasanjo (February 1976 to October 1979, when he handed power over to civilians); General Muhammadu Buhari (December 1983 to August 1985, when Buhari was deposed); General Ibrahim Babangida (August 1985 to August 1993, when he handed power to an interim government); General Sani Abacha (November 1993 to June 1998, when he died); and General Abdulsalami Abubakar (June 1998 to May 1999, when he handed power to civilians).

¹² See also J. Isawa Elaigwu, P.C. Logams, and H.S. Galadima, eds, *Federalism and Nation Building in Nigeria: The Challenges of the 21st Century* (Abuja: National Council on Intergovernmental Relations, 1994).

¹³ *Report of the Constitution Debate Coordinating Committee (CDCC), Volume 1, Main Report* (Abuja: Government Printer, December 1999), p. 56.

¹⁴ *Ibid.*

¹⁵ For example, insertion of a new provision allowing recall of federal and state legislators (§69 and 110).

¹⁶ For example, establishment of a new National Judicial Council (§153 and Third Schedule Part 1(I)), whose mandate encapsulates both federal and state judges. The Tobi Committee had rejected a proposal to establish such a unified council on the grounds that it would infringe on Nigeria’s federal structure.

¹⁷ Constitution of the Federal Republic of Nigeria (Promulgation) Decree No. 24 of 5 May 1999.

¹⁸ Later 49, following the withdrawal of one of the committee members.

¹⁹ After Murtala was assassinated in February 1976 in a failed coup attempt by junior army officers, his successor, General Olusegun Obasanjo, carried through Murtala’s program for a return to civilian rule as planned and on schedule.

²⁰ *Report of the Constitution Drafting Committee*, 2 vols (Lagos: Government Printer, 1976).

²¹ See, for example, W.I. Ofonagoro, A. Ojo, and A. Jinadu, eds, *The Great Debate: Nigerian Viewpoints on the Draft Constitution, 1976/1977* (Lagos: Daily Times Publications, 1977); S. Kumo and A. Aliyu, eds, *Issues in the Nigerian Draft Constitution* (Zaria: Institute of Administration, Ahmadu Bello University, 1977); and *National Seminar on Islam and the Draft Constitution* (Kano: Islamic Foundation, 1977).

²² The debates can be read in *Debates of the Constituent Assembly of 1977-78*, 3 vols (Lagos: Government Printer, 1978).

²³ See *ibid.*, vol. 1, pp. 4-9.

²⁴ Constitution of the Federal Republic of Nigeria (Enactment) Decree 1978, 21 September 1978. Most controversial was the elimination from the Constituent Assembly draft of a provision disqualifying from election to office (for a limited time) anyone who, since independence, had been found guilty of corruption, unjust enrichment, or abuse of office.

²⁵ Constitution of the Federal Republic of Nigeria (Amendment) Decree 1979, 28 September 1979.

²⁶ J. Isawa Elaigwu and Habu Galadima, “The Shadow of Sharia Over Nigerian Federalism,” *Publius: The Journal of Federalism* 33 (Summer 2003): 123-44.

²⁷ *The (Nigerian) Guardian*, 12 February 2000, p. 1: “Bashiru Sule, a Moslem, was given 80 lashes before an enthusiastic crowd of about 500 people near the Emir’s palace in Gusau last Thursday, for drinking beer. Afterwards, Ibrahim Abubakar Ruwon-Dorawa, the judge who handed down the summary sentence, said ‘I am happy. It is a good day for Zamfara.’ Sule was caught drinking alcohol by members of a vigilante group raised by the state governor Ahmed Sani to monitor the observance of the strict Islamic code which was introduced to Zamfara on 27 January, officials said.” *The Guardian*, 18 February 2000, p. 5: “18-year-old Sani Mamman was yesterday given 100 lashes for having premarital sex. His partner, a 16-year-old, had her punishment deferred due to illness.” *The Guardian*, 24 March 2000, p. 1 ff.: The first amputation was on 22 March 2000, when the right hand of Bello Buba Jangebe was cut off for theft of a cow, to which he had confessed. Jangebe was given 30 days to appeal the sentence before the punishment was imposed; he declined to appeal.

²⁸ The two most famous stoning cases, involving Safiya Hussein (Sokoto State) and Amina Lawal (Katsina State), attracted worldwide attention. Both women were eventually discharged by the state *sharia* courts of appeal.

- ²⁹ “Nigeria At Cross Road,” a statement by Ohaneze Ndigbo, the umbrella body of all Igbo organizations, printed in *The Guardian*, 3 July 2000, p. 67.
- ³⁰ Per the Lagos State House of Assembly, reported in *The Guardian*, 16 November 1999, p. 3.
- ³¹ J.N.D. Anderson, *Law Reform in the Muslim World* (London: The Athlone Press, 1976), pp. 27-8. The only limitations were on forms of punishment. From the beginning of their rule, the British had abolished mutilation and torture and had subjected other penalties to a repugnancy test.
- ³² Editorial in *The Guardian*, 6 December 1999, p. 20.
- ³³ Per the Ondo State House of Assembly, reported in *The Guardian*, 24 November 1999, p. 7.
- ³⁴ *Report of the Presidential Committee on the Review of the 1999 Constitution, Volume 1, Main Report* (Abuja: Government Printer, February 2001), pp. 3-4.
- ³⁵ *Ibid.*, p. 4. See also *The Position of the Citizens’ Forum for Constitutional Reform (CFCR) on the Review of the Constitution of the Federal Republic of Nigeria, 2001*.
- ³⁶ J. Isawa Elaigwu, *Nigeria: A Rebirth for the Twenty-First Century* (Jos: Institute of Governance and Social Research, 2000), p. 17.
- ³⁷ *Report of the Presidential Committee on the Review of the 1999 Constitution, Volume 1, Main Report*, February 2001, p. 3.
- ³⁸ *Ibid.*, p. 37.
- ³⁹ Lord James Bryce, quoted in Paul E. Peterson, *The Price of Federalism* (Washington, DC: Brookings Institution, 1995), p. 175.
- ⁴⁰ Section 15(2) and Section 42.
- ⁴¹ Section 15(4).
- ⁴² Section 14(3)(4).
- ⁴³ Section 153 and Paragraph c, Part 1 of the Third Schedule to the Constitution. The military government of General Sani Abacha had earlier established a similar commission.
- ⁴⁴ B.O. Nwabueze, *A Constitutional History of Nigeria* (New York: Longman, 1982), p. 153.
- ⁴⁵ See *Report of the Commission appointed to enquire into the fears of Minorities and the means of allaying them* (London: Her Majesty’s Stationary Office, 1958).
- ⁴⁶ 1999 Constitution § 8.
- ⁴⁷ Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, reprinted in *Constitutions of the Countries of the World*, Release 97-1, (Gisbert H. Flanz, ed., 1997).
- ⁴⁸ *Ibid.*, Preamble.
- ⁴⁹ *Ibid.*, Art. 39.
- ⁵⁰ Section 162.
- ⁵¹ See, for instance, “New LGs: Lagos Warns of Imminent Crisis,” *ThisDay*, 22 April 2004, available at <http://www.thisdayonline.com>. The procedure, which is the subject of varying interpretations, is set out in Section 8(3).
- ⁵² Section 4(7)(a); *Attorney General of Abia State & Ors v Attorney General of the Federation* (2002) 6 N.W.L.R. (Part 763) 1.
- ⁵³ Per Eso, JSC, in *Attorney General of Ogun State & Ors v Attorney General of the Federation & Ors* (1982) 1-2 SC 13, at p. 35. See also Ogundare, JSC, in *Abia State & Ors v Attorney General of the Federation (Supra)*, at p. 435. To hold otherwise would attribute to a concurrent power an exclusive effect.
- ⁵⁴ *Attorney General of Abia State & Ors v Attorney General of the Federation (Supra)*.
- ⁵⁵ *Attorney General of Ondo State v Attorney General of the Federation & Ors* (2002) 6 S.C. (Part I), 1.
- ⁵⁶ By Decree No. 89 of 1992, a National Council on Intergovernmental Relations (NCIR) was established by General Babangida and mandated to, among other things, study and advise on potential conflict areas in intergovernmental relations, promote cooperation among the orders of government, and provide regular forums for the interaction of the officials of the different orders of government in the search for solutions to common problems. However, the NCIR, whose expertise would have been better appreciated in a democratic setting, no longer exists.
- ⁵⁷ *Report of the Constitution Drafting Committee Containing the Draft Constitution*, vol. 1 (Lagos: Federal Ministry of Information, 1976), p. xxix.
- ⁵⁸ *Ibid.*, p. xxx.
- ⁵⁹ In the 19 April 2003 presidential elections, the leading contenders for the office of president were mostly retired military officers: Olusegun Obasanjo of the Peoples Democratic Party (PDP), Muhammadu Buhari of the All Nigeria Peoples Party (ANPP), Odumegwu Ojukwu of the All Progressive Grand Alliance (APGA), and Ike

Nwachukwu of the National Democratic Party (NDP). In the run up to the 2007 presidential elections, apart from the incumbent vice president, Atiku Abubakar (who is a retired officer of the Nigerian Customs Service), Generals Ibrahim Babangida, Muhammadu Buhari, and Buba Marwa are being touted as leading contenders.

⁶⁰ This reference is to the US case *Marbury v Madison*, 5 US 137 (1803), in which the US Supreme Court asserted its authority to declare acts of Congress to be unconstitutional.

⁶¹ Section 11(4).

⁶² Sections 8, 9, and 12(3).

⁶³ Section 58(3).

⁶⁴ Section 4(8). See, for example, *Attorney General of Bendel State v Attorney General of the Federation & Ors* (1982) 3 NCLR 1; and *Attorney General of Ondo State v Attorney General of the Federation & Ors (Supra)*.

⁶⁵ Section 295.

⁶⁶ Cap. 162, Laws of the Federation of Nigeria, 1990.

⁶⁷ Section 44(3).

⁶⁸ Section 153 and Paragraph 32(a), Third Schedule.

⁶⁹ *Attorney General of Ogun State v Aberuagba* (1985) 1 N.W.L.R. (Part 3), 395.

⁷⁰ Paragraph D, Part II, Second Schedule.

⁷¹ Section 165.

⁷² Section 162(1).

⁷³ Section 153(1)(n) and section 32(b), Part 1, Third Schedule.

⁷⁴ *Attorney General of the Federation v Attorney General of Abia State & Ors* (2002) 4 S.C. (Part I), 1.

⁷⁵ Prior to that, the federal government established, pursuant to an executive bill enacted by the National Assembly, a Niger Delta Development Commission to cater to the interests of oil-producing communities.

⁷⁶ *Attorney General of the Federation v Attorney General of Abia State & Ors (Supra)*.

⁷⁷ Section 315.

⁷⁸ A bill for a new revenue-allocation formula that, in large measure, still favours the federal government is pending before the National Assembly.

⁷⁹ Section 5(4)(5).

⁸⁰ Section 34(2)(c).

⁸¹ Section 27(2)(d).

⁸² *Musa v INEC* (2002) 11 N.W.L.R. (Part 778) 223.

⁸³ Section 222(e).

⁸⁴ Section 225(3)

⁸⁵ Section 45(1).

⁸⁶ African Charter on Human and Peoples' Rights (Application and Enforcement) Act, Cap. 10, Laws of the Federation of Nigeria, 1990.

⁸⁷ For example, *Abacha v Fawehinmi* (2000) 6 N.W.L.R (Part 660) 228.

⁸⁸ Section 9.

⁸⁹ The committee called for memoranda, held nationwide tours (at which both written and oral submissions were obtained), organized local town meetings, and held state public hearings and zonal conferences at designated universities around the country.

⁹⁰ *Report of the Presidential Committee on the Review of the 1999 Constitution, Volume 1, Main Report*, February 2001, pp. 4-5.

⁹¹ Otiye Igbuzor, *A Critique of the 1999 Constitution Making and Review Process in Nigeria*, Citizens' Forum for Constitutional Reform (CFCR) Monograph Series, No. 1, 2002.

⁹² *Report of the Presidential Committee on the Review of the 1999 Constitution, Volume 1, Main Report*, February 2001, p. 2.

Table 1:
Subdivision of Nigeria's former regions into states

Year (governing official)	Northern Region	Western Region	Eastern Region	Total states
1967 (Gowon)	6	3	3	12
1976 (Murtala and Obasanjo)	10	4	5	19
1987 (Babangida)	11	5	5	21

1991 (Babangida)	16	7	7	30
1996 (Abacha)	19	9	8	36