

## THE FEDERAL REPUBLIC OF NIGERIA

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Nigeria became independent of British colonial rule on 1 October 1960. Except for a brief period (May-September, 1966) it has practised one form or the other of federalism, even under military rule. The geographic and demographic size of the country and its communal heterogeneity and complexity have made federal compromise both attractive and a political imperative for Nigeria. Even within the context of authoritarian military rule, with its hierarchical structure, a decentralized administration based on relatively autonomous subnational states and local governments has operated.

Successive military regimes amended the Constitution to suit their modes of governance and often referred to themselves “the Federal Military Government.” When an attempt to establish a unitary government was made in 1966, it led to violent reaction. The fact that Nigerians have been so concerned about their form of government - unitary, federal, or confederal – raises a number of questions. What has been the nature of the actual distribution of power and responsibilities among the component units of the federation? What has been the logic for this distribution? How has it evolved over time? How has it been managed? And have there been any gaps between constitutional provisions for the distribution of powers and responsibilities and the operation of the federation? What does the future hold in terms of how these powers and responsibilities are shared among component governments? Are these powers adequate for each government?

In this chapter, I suggest that:

1. the federal constitution in Nigeria is a product of its sociopolitical history;
2. the constitutional distribution of powers is a reflection of Nigeria’s experiences;
3. the logic of the constitutional distribution of powers and responsibilities is essentially to build a strong federation, which does not suffocate component units, while being able to keep the complex nation together;
4. the evolution of the constitutional distribution of powers and responsibilities indicates strong centripetal (if not unitarist) traits since Nigeria’s experiences of civil war;
5. the maintenance and management of the distribution of powers and responsibilities have been problematic, often demonstrating gaps between constitutional provisions and constitutional practice; and
6. the future distribution of powers and responsibilities among the component units of the federation is likely to tilt in favour of subnational units (in response to their demands for a greater devolution of powers) without necessarily making the federal government weak.

### THE FEDERAL CONSTITUTION IN HISTORICAL-CULTURAL CONTEXT

Nigeria is a multi-ethnic and multicultural society. It is composed of nationalities, subnationalities, and various conglomerations of people with differing population size and potentials, with particular cultural identities, social structures, traditions, values, hopes, and aspirations. Indeed, it is the pluralistic nature of Nigerian society, among other factors, that necessitated the country’s original formal adoption of federalism within the colonial framework. Nigeria has a total area of 932,768 square kilometres, of which 910,768 is landmass and 13,000 is water. With a population of about 130 million people, as well as a

population growth rate of 2.6 percent, Nigeria is one of the largest nation-states and the oldest surviving federation in Africa.

The people of Nigeria have well over 300 identifiable ethnic groups and over 400 lingo-cultural groups. This has made the country one of the world's most ethnically diverse societies. There are three large ethnolinguistic groups - the Hausa in the north, the Yoruba in the west, and the Igbo in the east. Consequently, the major languages of the Nigerian people are Hausa, Yoruba, and Ibo. English is used as the official language. The religious landscape of Nigeria is dominated by three major religions: African Traditional Religion (ATR), Christianity, and Islam. ATR is the oldest of all religions in Nigeria and has suffered the greatest impact from external religious onslaughts. Nigeria's GDP per head is US\$850, with a real growth rate of 2.7 percent.<sup>1</sup>

The legal system is based on English common law, Islamic Sharia law (in some northern states), and customary law. Section 10 of the 1999 Constitution prohibits federal, state, and local governments from adopting any religion as the official or state religion. The implication is that no religion should be accorded primacy over the others. Section 35 of the same Constitution entitles all Nigerians to "freedom of thought, conscience and freedom of religion, including freedom to change his or her religious belief." Section 10 of the 1999 Constitution has been a subject of controversy. Some Muslims have questioned the secular nature of the Nigerian state by insisting that colonial rule, under the tutelage of both the Church of England and the State of England, created a more Christian than secular Nigerian state. Many of these Muslims feel that they are not being accorded their freedom of religion as enshrined in Section 35 of the 1999 Constitution.

As a compromise solution, the Constitution prohibits any tier of government from adopting an official religion; it also provides that states may elect to use Islamic (Sharia) customary law and courts. The establishment of the state Sharia Court and Sharia Court of Appeal as well as their constitution, practices, and procedure are governed by Sections 240-244 and 260-264 of the 1999 Constitution. In addition, the Constitution provides for Customary Courts and Customary Courts of Appeal in Sections 265-269. Mutual suspicions among religious groups (especially between Christians and Muslims) have on occasion raised the political temperature of the polity.<sup>2</sup>

Nigeria has had a number of constitutions since 1914 - about nine, not all of which were promulgated or implemented. Under colonial rule Nigeria had, in effect, six constitutions: the 1922, 1932, 1946, 1951, and 1954 Constitutions, along with the Independence Constitution of 1960. After independence, Nigerian governments authorized the writing of five constitutions: the 1963, 1979, 1989, and 1995 draft Constitutions, along with the 1999 Constitution of the current Fourth Republic.

Nigeria officially became a federation in 1954, after a series of stages of constitutional engineering, and it remains the oldest surviving federation in Africa. The federation neither emerged through a contract between states nor as a voluntary union of a number of originally independent states;<sup>3</sup> rather, the modern history of Nigeria, as a political state, dates from the middle of the nineteenth century, when parts of what later became known as Nigeria came under the British colonial sphere of influence through charters granted to British companies and the eventual completion of the British conquest in 1903.

Initially, there were three separate territories that were treated as separate entities: the Lagos colony, the Oil Rivers Protectorate (from 1893 known as the Niger Coast Protectorate), and the Royal Nigeria Protectorate. In 1900 Britain revoked the company charters so that it could administer each of these territories more directly. The territories then became known as the Lagos Protectorate, the Protectorate of Southern Nigeria, and the Protectorate of Northern Nigeria. These territories were brought under unified administrative control with the amalgamation of the Colony of Lagos Protectorate and the Protectorate of

Southern Nigeria in 1906, and then with the amalgamation of the Protectorates of Northern and Southern Nigeria with the Colony of Lagos in 1914 to form the Protectorate of Nigeria, with its capital in Lagos. With this development, Nigeria's identity took its final geographic form.<sup>4</sup>

The British Colonial authority did nothing further to integrate these territories until 1946, when it promulgated the Richards Constitution (named after the British governor who proposed it). The dissatisfaction of Nigerian nationalists with the unitary nature of this Constitution and with the level of Nigerian participation led to a number of constitutional reforms. The MacPherson Constitution, 1951 (after another British governor), created a quasi-federal Nigeria, and this was followed by the Lyttleton Constitution, 1954 (after the then British secretary of state for the colonies), which confirmed the Nigerian colonial state as a federation. The constitutional reforms that led to Nigeria's independence in 1960 saw further federalization. As the prospects for independence approached, Nigerian politicians mobilized for competitive politics largely on ethnic and geo-ethnic lines. Mutual fears and suspicions of domination among these different ethnic and geo-ethnic groups generated intense pressures on the colonial administration for a more federal Nigeria. This was a factor in the nature of the distribution of powers and responsibilities in the 1960 and 1963 Constitutions.

After the Nigerian Civil War in 1970-72, Nigerians reacted negatively to the earlier dualistic federalism of the 1960s and its weak federal government, which they felt had encouraged secessionist bids from subnational groups. As one of Nigeria's former military heads of state put it: "Under the old Constitution, the regions were so large and powerful as to consider themselves self-sufficient and almost entirely independent. The Federal Government which ought to give lead to the whole country was relegated to the background."<sup>5</sup>

Thus, under the inspiration of successive military governments, the objective of subsequent Nigerian constitutions has been to strengthen the central government. As a matter of fact, a number of factors led to the centralization of political power under military rule, making it easy for subsequent constitutions to be designed in favour of the central government. These factors include: (1) the nature of military legislation, which made it easier to issue decrees taking over the functions of the subnational units; (2) the civil war, which gave emergency powers to the federal government to take over the functions of the subnational units - powers that were not reversed after the war; (3) the creation of more subnational states (now thirty-six), which weakened the resource base of the states; (4) the increase in petro-naira,<sup>6</sup> especially through profit taxes that accrued to the central government; and (5) globalization, has resulted in the strengthening of centralization, at least in the Nigerian case.

Given this background, it is easy to understand why the ostensibly civilian Constitution of 1979 tilted in favour of the federal government in its distribution of powers and responsibilities. The 1979 Constitution drew its inspiration from the previous military regimes, which umpired the transition to democratic rule. The military authorities had set up a constitution drafting committee consisting of forty-nine "wisemen," whose draft was debated and subsequently ratified with amendments by a 230-member constituent assembly. In the process, the outgoing military regime considered certain sections to be in the interest of the nation and entrenched them. As an illustration, the Land Use Decree - vesting ownership of land in government on behalf of the people -- was entrenched in the Constitution in spite of opposition to it.<sup>7</sup> Similarly, the National Youth Service Corps<sup>8</sup> was also entrenched in the Constitution, again in "the national interest," as perceived by the military regime.

In 1987 the next military government, that of General Ibrahim Babangida, set up a constitution review committee to review the 1979 Constitution. A constituent assembly was

then inaugurated to debate the draft. General Babangida identified seven areas not open to debate in the Constituent Assembly (CA). These included: (1) federalism as a form of government; (2) the injunction against the adoption of a state religion; (3) the creation of states and the alteration of boundaries of state and local governments; (4) presidentialism, respect, and observance of fundamental human rights; (5) a two-party-system; (6) the continuance of “the ban or disqualification placed on certain persons from participation in politics”, and (7) belief in basic freedoms, including freedom of the press. The CA was precluded from deliberating on these issues, with regard to which the military regime felt that Nigeria had already arrived at a consensus. In his address to the CA, General Babangida stated categorically that “we need a strong federal government, we also need development-oriented state and local governments.”<sup>9</sup> The resulting 1989 Constitution was modelled on the 1979 Constitution but with some amendments, and it remained in operation at local and state levels from 1992 to 1993.

The 1995 Draft Constitution, although the result of a national constitutional conference, was inspired by the military regime of General Sani Abacha. This draft constitution, unlike those of 1979 and 1989, tried to revisit the issue of the distribution of powers and responsibilities within the federation. It revised the legislative list and clearly established a state legislative list under which agriculture and education (which used to be in the concurrent list) were included. This draft was never promulgated into law, however, because General Abacha’s death marked the end of his transition program.

His successor, General Abdulsalami Abubakar, set up the twenty-five-member Constitution Debate Collating Committee in November 1998 to review the 1979 and other constitutions and to come up with a new draft constitution. Without adequate consultations, the 1979 Constitution was “renovated” and dusted off to create the 1999 Constitution; however, elected officials and Nigerians did not see this document until after the elections, during the hand-over process. The Constitution of 1999 was promulgated on 29 May 1999. Many Nigerians believe that this Constitution suffers a crisis of ownership because, when it was created, there was not even a pretence of general public participation. It is this Constitution that I use as the basis of my discussion.

## DISTRIBUTION OF POWERS AND RESPONSIBILITIES

Nigeria has a three-tier federal structure consisted of the federal, state, and local governments. Each level of government has constitutionally guaranteed autonomy in the area in which it operates. Local government is a guaranteed third-tier of government, even though the 1999 Constitution, Section 7(1) provides that state governments shall “ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.”

The legislative lists in the Constitution provide for the distribution of powers: the exclusive legislative list is assigned to the federal government; the concurrent legislative list is assigned to both federal and state governments and defines areas in which both can legislate; and the residual legislative list is assigned to the states. The exclusive legislative list has sixty-eight items, while the concurrent legislative list has twelve.

The exclusive legislative list includes: accounts of the government of the federation; arms, ammunition, and explosives; aviation (including airports); awards of honours and decoration; bankruptcy and insolvency; banks, banking, bills of exchange, and promissory notes; borrowing monies inside and outside Nigeria for the purposes of the federation or any state; census; citizenship, naturalization, and aliens; commercial and industrial monopolies; construction and maintenance of federal trunk roads; control of capital issues; copyrights; creation of states; currency, coinage, and legal tender; customs and excise duties; defence;



diplomatic, consular, and trade representation; drugs and poisons; election to offices of president and vice-president, governor, or deputy governor; evidence; exchange control; export duties; external affairs; extradition; immigration and emigration; implementation of treaties; insurance; incorporation, regulation, and winding up of corporate bodies other than those established by a law enacted by the state Houses of Assembly; labour; maritime shipping and navigation; meteorology; military (army, navy, and air force); mines and minerals; national parks; nuclear energy; passports and visas; patents; trade marks, trade, or business names; pensions and gratuities payable out of the public funds of the federation; police and other government security services established by law; posts, telegraphs and telephones; powers of the federal National Assembly and the privileges and immunities of its members; prisons; public debts; public holidays; public service of the federation; quarantine; railways; regulation of political parties; service and execution in civil and criminal processes, judgments, decrees, and other decisions of any court of law inside or outside Nigeria, except for laws made by the state; stamp duties; taxation of incomes; profits and capital gains, as provided by the Constitution; trade and commerce; traffic on federal trunk roads; water from sources declared by the National Assembly to affect more than one state; weights and measures; wireless, broadcasting, and television other than those owned by states; any matter with respect to which the National Assembly has power to make laws under this Constitution; and any “matter incidental or supplementary to any matter mentioned elsewhere in this list.”<sup>10</sup>

The concurrent legislative list includes: allocation of revenue; antiquities and monuments; archives; collection of taxes; electoral law; electric power; exhibition of cinematography films; industrial, commercial, or agricultural development; scientific and technological research; statistics; trigonometrical, cadastral, and topographical surveys; universities; technological and postprimary education. Section 4(5) of the Constitution provides that, “if any law enacted by the House of Assembly of a State is inconsistent with law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of inconsistency be void.”

Unlike the 1995 Draft Constitution, which specified a state legislative list, the 1999 Constitution has no such list. However, all matters not identified in the exclusive federal, concurrent, and the local government lists come under the jurisdiction of the states. These residual powers are in fact extensive. They include, among others, health services, rural development, and social welfare. Nevertheless, states complain that the federal government has too much power and that the legislative lists should be revised in their favour. I return to this issue below.

The functions of the Local Government Councils are also clearly stated in the Fourth Schedule. These include: (1) participation in the economic development of the state (such as Section 1[a-k]); establishment and maintenance of cemeteries, burial grounds, and homes for the destitute and infirm; licensing of bicycles, trucks, and others; establishment, maintenance, and regulation of slaughterhouses, market, motor parks, and so on; construction and maintenance of roads, streets, drains, parks, and gardens; provision of public conveniences, sewage, and refuse disposal; registration of all births, deaths, marriages, and so on; (2) provision and maintenance of primary, adult, and vocational education; (3) development of agriculture, other than exploitation of minerals; (4) provision and maintenance of health services; and (5) any other functions conferred on the councils by the state House of Assembly.

The fiscal and monetary powers of each tier of government have also been delineated, especially by Decree No. 21, 1998, which has since become the Act of the National Assembly. The federal government’s tax powers include: a profit tax on petroleum and personal income tax (with respect to members of the Armed Forces of Nigeria and the

Nigerian Police Force as well as residents of Federal Capital Territory [FCT] Abuja, staff of the Ministry of Foreign Affairs, and non-resident individuals); import and export duties; a company income tax; a withholding tax on companies, residents of FCT Abuja, and non-resident individuals; a value-added tax (VAT) shared with other tiers of government; an education tax; a capital gains tax on Abuja residents, corporate bodies, and non-resident individuals; and stamp duties on “bodies corporate” and residents of Abuja.

State taxing powers cover personal income taxes (pay-as-you-earn or direct taxation or assessment); withholding tax (individuals only); capital gains tax (individuals only); stamp duties as instruments executed by individuals; entertainment tax (pools, betting, and lotteries as well as gaming and casino taxes); property tax, market taxes, and levies (where state finances are involved), along with naming of street registration fees at state capitals.

The Constitution expects local government councils to generate their revenues, in part, from: entertainment tax, motor park duties, property tax, trading and marketing licences; radio and television licences and rates; shop and kiosk rates as well as tenement rates; on-and-off liquor licences; slaughter slab fees; marriage, birth, and death registration fees; cattle tax payable by cattle owners only; signboard and advertisement permit fees; and customary burial ground permit fees.

In Section 162(1) the Constitution provides that all revenues of the federation shall go into the Federation Account (FA), except for salaries of the personnel of the Armed Forces of the Federation, the Nigeria Police Force, the staff of the Ministry of Foreign Affairs, and the FCT Abuja. Section 162(2) provides that the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) shall present a revenue formula to the president to be placed before the National Assembly for the purposes of distributing the resources in the FA. The distribution is both vertical (in terms of federal-state-local) and horizontal (in terms of allocation among the states). Account is to be taken of the revenue-sharing principles of “population, equality of states, internal revenue generation, land mass, [and] terrain as well as population density.” The Constitution also provides that this formula should allow for 13 percent of the FA to be paid to the state that is home to the natural resources in question.

The revenue formula inherited by the civilian administration in May 1999 for sharing the FA vertically among tiers of government breaks down as follows: federal government 48.5 percent, states 24 percent, local governments 20 percent, and special funds 7.5 percent. When the Supreme Court declared the 7.5 percent special funds illegal, however, President O. Obasanjo signed a presidential order in May 2002 adding this fund to the federal government’s allocation, thus bringing the federal government’s share of the FA to 56 percent. State and local governments rejected the amendments contained in the presidential order. This led to another presidential order in July 2002, stipulating a new revenue formula: federal government 54.68 percent, states 24.72 percent, and local governments 20.60 percent.<sup>11</sup>

In 2003 the RMAFC presented a fourth proposed revenue formula to President Obasanjo, which he placed before the National Assembly as a revenue bill. The formula recommended by the RMAFC was: federal government 46.63 percent, state government 33 percent, and local governments 20.37 percent.<sup>12</sup> When it was clear to President Obasanjo that the wave of opinion in the assembly was in favour of downsizing the federal government’s share of the FA, he cleverly withdrew the bill on the pretext that there was more than one version of the bill before the National Assembly. The National Assembly denied the allegation, but the president withdrew the bill, only to ask the RMAFC to consider increasing the federal government’s share of the FA. Apart from the lingering controversies over the share of revenue accruing to the FA, the state and local governments also disputed the maintenance of the State Joint Local Government Account (SJLA). The local governments, and later the RMAFC, accused the state governments of misinterpreting and misusing the constitutional powers given to them in Section 162(5-8) of the 1999 Constitution, which

provides for the redistribution of funds to the local government councils in each state. The state governments were alleged to have been illegally deducting funds meant for the local governments.<sup>13</sup> This has been a crucial area of conflict at the lower level of intergovernmental relations.

An interesting aspect of Nigerian federation is its approach to the management of the economy. In the first and second republics the civilian leaders believed in development planning as a technique of managing economic development. The government of the late prime minister, Sir Abubakar Tafawa Balewa, introduced the First Development Plan, 1962-68. General Yakubu Gowon introduced the Second Development Plan, 1970-75. The Third Development Plan, 1975-80, was initiated by Gowon but streamlined and executed by General Murtala/Obasanjo's government. Alhaji Shehu Shagari introduced the Fourth Development Plan, 1980-85. Since then, succeeding military regimes have abandoned development planning and have opted for three-year rolling plans. Even under the Obasanjo civilian government (i.e., since 1999), development planning has not been used as a technique of managing economic growth.

Similarly, the 1999 Constitution provides that borrowing of "moneys within or outside Nigeria for the purpose of the federation or any part" (Second Schedule, Part I, Item 7) is an exclusive matter of the federal government. This means that states must get the approval of the federal government in order to borrow money to execute their programs, whether from within Nigeria or from external sources. This issue has become contentious given the mounting internal and external debt profiles of states and local governments. Recall that all revenues in the federation first go into the FA, from where they are shared. The president felt that many state and local governments were heavily in debt as a result of internal and external loans. He then proceeded to deduct these debts at source, thus leaving some states and local governments with zero statutory allocation from the FA. A Supreme Court judgment declared this illegal: thus the controversy over debts and debt-servicing continues. The RMAFC has suggested that, for the next twenty years, no tier of government should borrow money; but this call is unlikely to be heeded.<sup>14</sup>

In the Nigerian federation each tier of government has its own executive branch (including its own bureaucracy), legislature, and judiciary. Each level operates relatively autonomously. However, years of military rule, with its hierarchical character, seem to have robbed the current federation of its pyramidal structure.<sup>15</sup> The federal government carries out functions that many Nigerians do not consider to belong to it. Some Nigerians have argued that the excessive centralization of political and financial powers under military regimes has encouraged the federal government to take adventurous excursions into areas such as rural development (e.g., bore holes) and culture.

While operators of the Nigerian federation have described it as "cooperative federalism" (and does demonstrate such traits), it is politically and financially dominated by the federal government. Under the distribution of powers in the 1999 Constitution Nigeria is a centralized federation with strong unitary elements. Currently, there are complaints about the overcentralization of power in the federal government (the product of long periods of military rule). This school of thought has argued that, if Nigeria wants to practise "true federalism," then it should go back to its 1963 Constitution. Yet there are centrists who continue to support a very strong federal government in order to counter Nigeria's history of political instability and civil war.<sup>16</sup>

There are areas of overlapping responsibility, such as education (primary and secondary school levels), housing, agriculture, and water, which many observers and practitioners of federalism believe should be transferred to the residual state jurisdiction. Their argument is one of subsidiarity: that state governments, being closer to the people, could handle these matters more appropriately, effectively, and sensitively than could the

central government.<sup>17</sup> A persistent area of controversy is the Nigeria Police Force. While Governor Tinubu of Lagos has argued for a state police force, Governor Dariye of Plateau State cannot imagine spending his meagre resources on maintaining a large force. Important as state police forces are to the autonomy of the subnational states and to the dynamics of Nigeria's federation, the leaders at the state level are split over this matter. Given Nigeria's history, it is not clear that the current constitutional review exercise will result in the establishment of state police forces.

Similarly, there is a general outcry from subnational units over the current revenue allocation formula. State governors have lobbied the RMAFC and members of the National Assembly to increase the states' share of the FA to 40 percent. However, there is a general view among Nigerians that there is a high level of complacency among the three tiers of government over revenue generation. By 1999 statutory allocation from the FA accounted for between 46 percent to 95 percent of the annual budget of states. Only the states of Lagos and Kano generated up to 40 percent of annual budget revenues from internal sources. The situation has gotten worse, even though a few states are making some positive efforts to generate funds from internal sources. This is because each government is heavily dependent on the statutory allocation from the FA, which is predominantly petroleum-based. Furthermore, many Nigerians are unhappy about the pattern of imprudent expenditure at all levels of government.

Also relevant is the gap between constitutional provisions and the operation of the federation. An illustration of this is the election to local government councils, which was due to be held in December 2002. No elections were held until the expiry of the term of these councils in May 2003, partly because state governors and the ruling political parties did not want new elections at this level. As an interim measure, and contrary to the constitutional provisions, state governors and the president met and decided on interim local government administrations under caretaker committees. This action was taken in spite of the advice of the federal attorney-general regarding the unconstitutionality of such an action. Shortly afterwards, the president announced a panel to review the local government system, yet another action regarded by many legal experts as unconstitutional. Since there was a need to review governance in the three tiers of government, many observers and practitioners felt that the matter should have been handed over to the National Assembly's Constitution Review Committee. Eventually, elections to local government councils were held in April 2004, dogged by complaints of electoral malpractice. Unfortunately, the absence of elected local government councils gave some state governors the opportunity to appoint their political minions in a caretaker capacity. More disturbing still are the allegations that many state governors have diverted statutory FA allocations from local government councils to state coffers. This has hindered the level of development at the local, or grassroots, level, where most Nigerians live.

## THE LOGIC OF THE CONSTITUTIONAL DISTRIBUTION OF POWERS AND RESPONSIBILITIES

It may be argued that there are three distinguishable periods in Nigeria's history with regard to the distribution of powers and responsibilities among the various tiers of government. The first period is 1960-65; the second is 1966-93; and the third is 1994-2004.

While the federal system in Nigeria was introduced in 1954, the country did not become independent until 1960. The period between 1960 and 1965 can be described as a time when Nigeria operated a "dualistic" federation. The impact of mutual suspicions and fears among ethnic and geo-ethnic groups in the terminal colonial period affected the distribution of powers among the three tiers of government. The regions were more



autonomous than they were at the terminal colonial period; that is to say, the autonomy of the regions increased after independence. Agriculture and education (except postsecondary) were on the residual list. Local governments (or “native authorities” in the North) had their own police forces, except for the Eastern Region, which maintained the services of the Nigeria Police. On the concurrent jurisdiction list was the maintenance of law and order. The 1960 and 1963 Constitutions had regional constitutions appended to them.

In the operation of the federation, the regions often displayed their autonomy in various ways. Each region had a deputy high commissioner or regional agent in London who operated as though he represented a different country. In addition, the regions often interfered in areas that were the specific preserve of the federal government (such as foreign affairs). In 1963, for example, Israel gave scholarships to some Nigerian students to study in Israel. While the Eastern and Western Regions accepted these scholarships, the Northern Region rejected them because it did not recognize the State of Israel.<sup>18</sup> This was in spite of the Constitution, which did not provide for recognition of foreign countries by regional governments on the grounds that foreign affairs was an exclusively federal matter.

Interregional squabbles over the revenue allocation formula, and the allocation and location of industries such as the iron and steel complex under the National Economic Council, were reflections of the intensely centrifugal nature of the Nigerian federation. In fact, on a number of occasions in Nigeria’s history, certain regions had threatened secession. The North had threatened to secede from the federation in 1950 if it did not receive 50 percent of the membership of the Legislative Council in Lagos.<sup>19</sup> In 1953 the Western Region threatened to secede if the colony of Lagos were not merged with it.<sup>20</sup> In 1964 the Eastern Region threatened to secede from the federation over that year’s federal elections.<sup>21</sup>

After 1965 such movements became even more serious. In 1966 Adaka Boro, Nottingham Dick, and Owonaro declared a Delta Peoples Republic, which the army had to put down.<sup>22</sup> In 1966 the North threatened to secede from Nigeria after General Ironsi declared the country a unitary state.<sup>23</sup> These centrifugal forces climaxed in the secession of the Eastern Region - as Biafra - in 1967. This was followed by two and a half years of civil war, which cost Nigeria an estimated one million lives.

After the civil war, General Gowon and his military government embarked on an aggressive centralization of power in order to enable the federal government to keep the country together and to give Nigeria a sense of direction. Thus from 1970 through to 1993 the emphasis of successive leaders was on how to strengthen the central government in order to avoid the aggressive centrifugal tendencies of the federation under the First Republic. By 1999 the central government had become so strong under military rule that emerging politicians began to complain of federal suffocation of the states.

This centralization became more manifest in 1994 when General Sani Abacha, following the incarceration of Chief M.K.O. Abiola, the alleged winner of the June 1993 presidential election (which was annulled) Opposition groups (especially Yorubas) began to push for a sovereign national conference to discuss the future of the Nigerian federation. They opted for a loose federation, like the one that had existed under the 1960 and 1963 Constitutions. In fact, Chief Anthony Enahoro, Nigeria’s minister of information during the civil war, advocated the merging of existing states within a new federation. Similarly, Chief Alex Ekwueme, Nigeria’s vice-president under the Second Republic, advocated eight new regions.

It was in this context that General Abacha convened a national constitutional conference in 1994-95. The result of this conference was a two-volume publication: the first volume contained a draft constitution, while the second volume set out the logic for the distribution of powers. The 1995 draft Constitution, which was never promulgated, revised the legislative lists, giving states functions that they had not had in the 1979 and 1989

Constitutions. The logic for this was provided by the report that came out of the Conference, which recommended in favour of “true federalism” and “the equitable distribution of political and economic powers between the federal government and the component units.”<sup>24</sup>

When General Abdulsalami succeeded General Abacha, he realized that the centrifugal forces in the federation had again become very strong. The 1999 Constitution was promulgated on 29 May 1999, the day the military handed over power to the new civilian rulers. As noted above, even the new rulers had not been able to read in advance the Constitution they were expected to operate and defend. Nor had Nigerians.

In sum, the logic of the distribution of powers and responsibilities in the Nigerian federation has involved the desire to strengthen the federal government sufficiently to provide an overarching umbrella under which all groups can be accommodated. Like all federations, Nigeria has had to make adjustments. Often the federal pendulum has tended to alternate between two extremes, depending on whether the pressure was coming from centrifugal or centripetal forces.

The greatest inspiration for a centripetal federal constitution has been the military, which is always a major contestant in the Nigerian power equation. Successive military leaders have clearly pointed out that, if Nigeria is not to experience a repetition of its fratricidal war of the late 1960s, then it must have a strong federal government - strong enough to be interventionist and to keep the country together. This was partly why General Gowon<sup>25</sup> opted for a federation with a strong federal government, and why General Murtala Mohammed and his team preferred a presidential rather than a parliamentary system of government. They wanted to avoid a politically split executive (which they felt was a danger in a parliamentary system), and they believed that a presidential system would be more likely to provide effective leadership.

Since the civil war the objective in the distribution of powers has been to strengthen the federal government politically and economically in order to enable it to intervene in essential policy areas and to keep the country together. Again, the inspiration for this has been the military and its leaders, who, in spite of centrifugal forces in the polity, have had a centrist perception of Nigerian federation because, for them, survival/security is the first law of the state. At the same time, behind the distribution of powers and responsibilities lies the principle that each tier of government has political, social, and economic obligations. While the federal government has the cardinal responsibility for the security of the state and of lives and property, each tier of government has social welfare and developmental functions. Revenue allocation is a concurrent matter shared by both federal and state governments. Unfortunately, in many essential areas, there have, in practice, been few intergovernmental relations over the past four years. It should be noted that Nigeria operates as a symmetrical federation. Thus, even with regard to the sharing of FA resources among the states, the federal equality of states has been a cardinal principle.

## EVOLUTION OF THE CONSTITUTIONAL DISTRIBUTION OF POWERS AND RESPONSIBILITIES

### *Evolutionary Process*

The evolution of the constitutional distribution of powers in Nigeria has occurred neither through constitutional amendments nor through collective action by the states. All the major changes in the distribution of powers and responsibilities in Nigeria have been through “megaconstitutional” changes. Since colonial times all changes in the legislative lists have occurred as the result of a new constitution or traumatic changes (such as military coups). These have usually had an adverse impact on the polity.

However, Section 9(2) of the 1999 Constitution does provide avenues for altering or amending the Constitution. Except for the creation of additional states provided for in Section 8, the National Assembly may alter the provisions of the Constitution if an amendment is “passed in either House of the National Assembly” by not less than a two-thirds majority and is approved by a resolution of the Houses of Assembly consisting of not less than two-thirds of all the states. In order to amend the provisions governing the mode of altering the Constitution, an act of the National Assembly may be passed by either House and must be “approved by the votes not less than four-fifths majority of all the members of each House, and also approved by resolution of the Houses of Assembly of not less than two-thirds of all the States” (Section 9[3]).

So far, 1999 Constitution has not been amended, even though there have been loud demands for its review and the National Assembly has struck a committee for this purpose.

While the Supreme Court has interpreted constitutional provisions and, in some cases, has given landmark judgments, the major changes to the distribution of constitutional responsibilities have occurred after a military coup, at which point a new constitution is usually written or the old one amended. This always constitutes an attempt to bring the Constitution in line with a military mode of governance.

Thus, the 1963 Constitution was amended only after the January 1966 military coup. The Federal Military Government (FMG) issued Decree No. 1, 1966, giving it the “powers to make laws for the peace, order and good government of Nigeria or any part thereof, with respect to any matter whatsoever.”<sup>26</sup> The powers of the military governor of a region were declared to be to make “laws for the peace, order and good government” of that region. The governor could “not make laws with respect to any federal matter included in the Executive Legislative List,” nor could he “make laws in matters included in the Concurrent Legislative List,” except “with prior consent of the Federal Military Government.”<sup>27</sup> These provisions were retained by successive military regimes.

The 1963 Constitution was replaced by the 1979 Constitution, which made drastic changes to the distribution of powers and responsibilities among tiers of government. The 1979 Constitution was replaced by the 1989 Constitution in 1992, but it was only operational at local and state levels during the military government’s transition program. The 1989 Constitution was replaced by the current Constitution on 29 May 1999. Currently, the National Assembly has a constitutional review committee mandated to review the 1999 Constitution. Given that the political process is regularly punctuated by military coups, a legislative culture of making non-military amendments to the Constitution is yet to be adequately established. The political strains and stresses of “megaconstitutional” changes on the polity can be readily imagined. Indeed, while the National Assembly Constitution Review Committee is currently working on possible amendments to the 1999 Constitution, there have been demands from some sectors of the society for a national conference leading to a new constitution - one that would be owned by the people.

### *Specific Constitutional Changes: An Overview*

The year 1954 marked the definitive federalization of Nigeria. In that year the Nigerian Marketing Board was regionalized and regional executives and legislatures began to operate. The 1954 Constitution was different from the 1951 Constitution, especially as it provided for a federal arrangement with two legislative lists: one that was exclusively federal and one that allowed for concurrent jurisdiction. All subject areas not covered by the two lists were residual and were reserved for the regions. In the event that federal law conflicted with regional laws, the former was to take precedence. The Constitution presented sweeping concessions to regionalism. It provided for a weak federal government as it reserved for the

regions an extensive range of matters not included in the exclusive federal and concurrent lists. Regions became semi-independent entities, each with an independent judiciary, a civil service, and other organs of government.

As mentioned above, the Independence Constitution of 1960 gave the federal government exclusive legislative powers over forty-four items, including defence, external affairs, aviation, currency, Lagos affairs, customs, mines, external borrowing, and shipping. Twenty-eight items were placed on the concurrent list, and these included the judiciary, police, health, the civil service and higher education. However, the regions were granted a large measure of autonomy in all matters outside the exclusive and concurrent lists, and were empowered to maintain good government and law and order.

The Republican Constitution of 1963 did not really make changes regarding distribution of powers between the federal government and the regions. As in 1954, Section 64(4) stipulated that, when a regional law conflicted with a federal law, it was the federal law that was to take precedence. But there were other provisions relating to emergency powers and the creation of states. Under Section 65 of the 1963 Constitution, the federal legislature had the power, at any time, to make laws for Nigeria or any part of it on all matter whatsoever for the purpose of maintaining or securing peace, order, and good government during any period of emergency. This meant that, in spite of the constitutional distribution of powers, the federal government could usurp the powers of the regions in order to make laws during emergencies. In 1962 the federal government declared a state of emergency in the Western Region and appointed an administrator for that region.<sup>28</sup> Similarly, the federal government was also empowered to legislate on residual subjects with the consent of the regional governor.<sup>29</sup> On balance, what existed between 1960 and 1966 is described by scholars and practitioners as a weak federal government - one in which the “regional tails” were “wagging” the federal dog.<sup>30</sup>

There was a gradual transition from the model of coordinate authority within the federation to an inclusive authority, or a model of collusion, especially from 1966 on as, under military rule, when the central government began to gradually usurp the powers of the regions. This process actually started in 1963 with the fragmentation of the regions from three into four. This was augmented from 4 into 12 in 1967, from 12 into 19 in 1976, from 19 into 21 in 1987, from 21 into 30 in 1991, and from 30 into 36 in 1996.

As noted, since 1966 all the military regimes in Nigeria have pursued the idea of a federation with a strong central government organized hierarchically to coincide with the command structure of the military. The military took a number of actions that led to the centralization of political authority in the Nigerian federation.<sup>31</sup> The nature of military legislation contributed to the increase of the federal government’s authority at the expense of the states. In particular, with the military’s overthrow of constitutional democracy, new states were created simply by decree. Decree No. 14, 1967, which created states, provided that these should inherit the powers of the former regions. Subsequently, however, Decree No. 27, 1967, announced that the “legislative and executive powers of the twelve newly created states in Nigeria are limited for the time being to residual matters.”<sup>32</sup> With regard to the exercise of matters in the concurrent legislative list, “specific consent of the Federal Military government is required,” whereas this used to be the prerogative of both regional and federal governments. The above decree, no doubt, placed limitations on the powers of the new states.

The 1979 Constitution simply consolidated this process of centralization. The powers of the federal government were extended to matters that had previously been exclusive to the regional governments. Let me provide an illustration. In the exclusive legislative list the 1979 Constitution listed sixteen items that had been within the concurrent competences of both federal and regional governments under the 1960 and 1963 Constitutions. These items



included arms, ammunitions, and explosive; prisons; bankruptcy and insolvency; commercial and industrial monopolies; combines and trusts; registration of business names; registration of tourist industry; labour as well as professional occupations; regulation of political parties; census; and public holidays. The 1979 Constitution nevertheless recognized the autonomy of states. Still, the federal government was allowed to take over the executive functions of the state during emergencies, while the procedure for declaring a state of emergency made for minimal interference.

The 1999 Constitution, a document designed under the tutelage of the military, also enabled the pursuit of a centralist agenda through distributing powers in a way that reinforced the centrist tendencies of the 1979 Constitution. As mentioned earlier, the exclusive legislative list not only gives the central government exclusive legislative powers (Second Schedule, Part 1) over sixty-eight items, but it also provides it with concurrent powers over the remaining twelve items. And, as noted above, federal law is constitutionally paramount to state law (by virtue of Section 4[5]).

Also as noted above, the revenue allocation formula is skewed in favour of the federal government (the continued constitutional hegemony of the federal government has made it impossible to reduce the disproportionate amount of the FA currently retained by it). The police force is centrally controlled as it is exclusive to the federal government. The judiciary and its funding are now to be centrally controlled through the National Judicial Council. All high court judges in the states are paid by the federation, while such lower courts as the Customary Courts, the Magistrate Courts, and the Sharia Courts are paid for by the states. The federal government also continues to enjoy wide powers to legislate on matters incidental or supplementary to the exclusive legislative list and to establish and regulate authorities to promote the very comprehensive list of “Fundamental Objectives and Directive Principles of States Policy” enumerated in Chapter 2 of the 1999 Constitution.

In contradiction to the centripetal trend in the federal-state distribution of powers, the 1999 Constitution, like the 1979 and 1989 Constitutions, defined local government in Nigeria as a third tier of government. Section 7(1) of the 1999 Constitution specifies that “the system of local government councils is under this constitution guaranteed.” It further states “the Government of every State shall ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.” The Constitution provides that local governments will participate in the economic planning and development of their local government area. Local government councils are expected to play important roles in the election of governors, in the creation of states, and in boundary adjustments between states.

The Constitution now promotes a partnership model that involves the devolution of substantial functions and powers to local governments, together with the financial resources to exercise these powers. The overall aim is to institutionalize a culture of participatory democracy, cooperative federalism, and development in Nigeria through local governments, which constitute the level of government nearest to the people and, therefore, a level that may serve as a catalyst to development. The federal government’s blueprint for reform, contained in the Guidelines for Local Government Reform, involves: (1) making appropriate services and development activities responsive to local initiatives by developing or delegating them to local representative bodies; (2) facilitating the exercise of democratic self-government close to the local levels of society and encouraging initiative and leadership potentials; (3) mobilizing human and material resources through the involvement of members of the public in their local development; and (4) providing a two-way channel of communication between local communities and government.<sup>33</sup> Ironically, it took a military regime, that of General Obasanjo, to bring in these 1976 reforms and thus make local government councils a guaranteed third-tier of government. Local governments were no longer, as they were in

1966, mere administrative units or agents to which powers could be granted and withdrawn at the whim of the state government.

On balance, since the Nigerian civil war, the evolution of the distribution of powers and responsibilities indicates a strong adjustment in favour of centripetal forces. The greatest inspiration for the unitarist tendencies in Nigeria's distribution of powers and responsibilities has come from military regimes. This has been so in spite of the loud, and at times rowdy, centrifugal forces in the federation.

## MAINTENANCE AND MANAGEMENT OF THE DISTRIBUTION OF POWERS AND RESPONSIBILITIES

With regard to the maintenance and management of the distribution of powers and responsibilities, it is important to note that the current Constitution only came into effect on 29 May 1999. Given the military rule that has periodically punctuated democratic governance in Nigeria, there has been no chance to establish a culture of constitutionalism that would, in turn, enable an appropriate current evaluation of the gaps between the Constitution as written and the Constitution as applied. The period since 1999 simply does not provide us with enough time to adequately assess the situation.

However, we may identify a few issues that point towards the likely direction of future development. Designed as a cooperative federation, there has, in practice, been a cooperative–competitive relationship among tiers of government. Moreover, the residual militarism in the actions of the federal government tends to generate conflicts rather than to dampen them.

### *Overall Structure of Intergovernmental Relations*

Unlike Germany, with its Basic Law, Nigeria has no provision enabling states to carry out federal laws. It is therefore necessary for the federal government to consult other tiers of government and to establish a framework for cordial intergovernmental relations. Unfortunately, President Obasanjo, as a former military head of state, lacks the skills necessary for consultation and compromise. At times he mistakes the pyramidal structure of the federation for the military command structure to which he is more accustomed. Consequently, intergovernmental relations in Nigeria have been characterized by reluctant cooperation and competition among the levels and arms of government. Areas that have generated intense competition between the federal and state governments are revenue allocation and the allocation of jurisdictional powers between federal and state governments (notably in the areas of primary education, agriculture and housing, control of local governments, inter- and intrastate boundary disputes, and the siting and execution of federal projects).

There are constitutional provisions in the third schedule (Part 1) of the 1999 Constitution that establishes some institutions for dealing with intergovernmental relations. These include the Code of Conduct Bureau, the Council of States, the Federal Character Commission, the Federal Civil Service Commission, the National Judicial Council, the Federal Judicial Commission, the Independent National Electoral Commission, the National Defence Council, the National Economic Council, the National Population Commission, the National Security Council, the Nigeria Police Council, the Police Service Commission, the Revenue Mobilization Allocation and Fiscal Commission, the Independent Corrupt Practices and Related Offences Commission, the Economic and Financial Crimes Commission, and the Niger Delta Development Commission. Attempts have been made over the years to build national unity by ensuring that no unit within the federation feels that it can go it alone.<sup>34</sup>

Most of the Constitution's provisions promote the formation of national political parties and inculcation of a federal character into political (and other) appointments to the public service of the federal, state, and local governments. In fact, the Federal Character Commission is expected to monitor the implementation of the Federal Character Clause in Section 14(3) of the 1999 Constitution. The Federal Character Clause,<sup>35</sup> which first appeared in the 1979 Constitution, was designed to promote national unity and loyalty by ensuring various ethnic and sectional groups were adequately represented in both public service and government agencies at all three levels of government. This was expected to reduce the fear of domination by one group or section. The 1995 draft adopted a zoning system for the federation (North-Central, North-East, North-West, South-East, South-South, and South-West)<sup>36</sup> to aid in this endeavour. While this system remains non-constitutional and informal, political actors been sensitive to it. However, the performance of the Federal Character Commission, especially at the federal level, has come under criticism from some sections of the Nigerian public.<sup>37</sup>

The 1999 Constitution also provides for exceptional or emergency situations that allow the federal government to intervene in the governance of states. Section 305 provides that the president can declare a state of emergency only when (1) "the federation is at war," (2) "the federation is in imminent danger of invasion or war," or (3) "there is actual breakdown of law and order and safety in the federation or any part thereof." Section 305(3-6) provides an elaborate process pertaining to the declaration of emergency.

Given the intensity of communal violence in four local government areas in Plateau State, on 18 May 2004 the President Obasanjo declared a state of emergency throughout the entire state and suspended the elected governor, Chief Joshua Dariye, and the State House of Assembly. He then appointed a state administrator. Since then there have been controversies over the presidential powers of emergency. Many legal luminaries in Nigeria, including Chief Rotimi Williams and Professor Nwabueze, expressed the opinion that the president had exceeded his powers and that his action was "a contradiction of all known principles of federalism."<sup>38</sup> The National Assembly has, however, passed resolutions supporting Obasanjo's actions.

### *General Federal-State Relations*

The relations between the federal and state governments have run hot and cold. The state governors complain about Obasanjo using the Constitution as though he were a military president. They accuse the federal government of taking actions in flagrant disregard of the constitutionally guaranteed autonomy of state governments. A few illustrations give us an insight into the gap between constitutional provisions and their practice. On 1 May 2000 President Obasanjo announced a federal minimum wage of 7,500 naira (or US\$56.8) per month and a for state government as 5,500 naira (or US\$41.7) per month.<sup>39</sup> State governors were furious. While minimum wage falls under the exclusive federal list, it was not an executive matter. The National Assembly was not even involved in the process, nor had it received any bill from the president. Obasanjo had not consulted state governments, which were already having problems paying the monthly wages of their staff. This led to crises all over the country, until the Nigerian Labour Congress finally engaged each state government in wage negotiations.

Similarly, primary education is a residual matter. However, President Obasanjo introduced the Universal Basic Education program in 2000. Again, state governments protested. After all, they were expected to implement this program, yet they had not been consulted. Nor was there a bill before the National Assembly. The federal government had the same sort of problems getting the cooperation of state governments with regard to the

implementation of the Poverty Alleviation Program, now replaced by the National Poverty Eradication Program. State governments had to remind the federal government that they had their own poverty alleviation programs. They pointed out that, as state governments, they were not agents of the federal government. Where areas of mutual interests were involved they wanted, at the very least, to be consulted.

In the same vein, there were problems in federal–state relations with regard to the Nigeria Police Force and the maintenance of law and order. Given the ineptitude and inefficiency of the Nigeria Police Force, governors of states with large cities and high rates of crime found themselves unable to deal with crime. Policing is a federal matter, even though the governor of each state holds the title of chief security officer. State governors complained that state commissioners of police ignored their orders but took those from the inspector-general of police. In frustration, some governors demanded a constitutional amendment that would enable the states to establish their own police force. However, some governors were opposed to establishing state police forces because of the cost involved. These governors opted for decentralizing the Nigeria Police Force to enable it to respond more effectively and promptly to problems on the ground. In some states, governments officially resorted to using vigilante groups to maintain law and order.<sup>40</sup>

### *Revenue Sharing Issues*

Distribution of resources is another major area of conflict between the states and the federation. While the 1999 Constitution provides for 13 percent of the FA to be paid to the states from which natural resources are exploited, the Niger-Delta States (Rivers, Delta, Akwa-Ibom, and Bayelsa) – that is, the states adjacent to offshore petroleum areas - are very dissatisfied. They are angry with the federal government for going to the Supreme Court to get a judgment distinguishing between onshore oil (13 percent of which was to go to the states in the form of mineral rents and royalties) and offshore oil (which was to go to the federation as a whole). The Supreme Court had judged in favour of the distinction, which meant that the littoral states (such as Akwa-Ibom) lost quite a substantial amount of funds from the FA.

Governor D. Alameiseigha of Bayelsa State captured the feelings of many states:

“for Nigeria to survive, the federal government should give up some of its powers to the federating units. At the moment, the federal government represents injustice to millions of minorities in Nigeria especially the Niger-Delta ... a federal government that does not produce but consumes is an unsustainable federal government and such federal government can only protect its unfair privileges through the force of arms.”<sup>41</sup>

A new law listing the distinction between onshore and offshore oil has now come into operation, and this is a big relief for some littoral states. Many Nigerians feel that the federal government has so many resources at its disposal that this encourages its forays into areas in which it has no business, such as primary education. The calls for a review of constitutional legislative powers and the tax powers of each tier of government have, therefore, not abated.

### *Federal-State-Local Issues*

The relations between the national and state assemblies have not been smooth. In view of the confusion over the actual tenure of chairs of local governments, state Houses of Assembly made laws limiting the term of office of these chairs to two years in some states, and three years in others. In an attempt to sort out the problem, the (federal) Senate set up a committee



to make recommendations to the National Assembly. The state Houses of Assembly decided that this was a usurpation of the powers given to them under Section 7 of the Constitution, which states that the “Government of every state shall ... ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such [local] councils.” They went to the Supreme Court,<sup>42</sup> which ruled in their favour.

Some state governments created, or tried to create, additional local governments. Bayelsa State, for example, created new local government councils and transferred the chairs of the old local governments to new local governments. The Senate of the Federal Republic declared this action to be null because it violated Section 8(3) of the Constitution, which provided elaborate processes for the creation of new local governments (including a referendum). In addition, the Senate argued that, unless the list of local governments as contained in the First Schedule, Section 3, Part 1, was duly amended, no new local government was legal. In May 2004 President Obasanjo withheld statutory allocations to local governments in the States of Niger, Nassarawa, Ebonyi, Lagos, and Katsina, which had created new local governments and conducted elections. At the Supreme Court level, the affected states challenged the authority of the president to withhold statutory allocations. They argued that they were not asking for statutory allocations to the new local governments but, rather, to the old ones, until such time as the National Assembly could make amendments to Section 8(3) of the Constitution.

In state-local government relations there have been what amount to cold wars. Local governments complain about undue interference from state governments. For example, the Sokoto State government was taken to court by fifteen local government councils, and the court prohibited it from deducting 3 percent of its statutory allocation to fund the Sokoto Emirate Council, as passed by the State House of Assembly.<sup>43</sup>

In addition, local government chairs have argued that state governors (especially where the chair comes from a party different from the governor’s) plot to remove them by using the audit powers of the state. State governors have also been accused of plotting with the state Houses of Assembly to shorten the tenure of three years of elected local government officials in order to put their supporters in office. In some states there have been protests by elected local government officials against attempts by state Houses of Assembly to reduce their term to two years. Thus, in Imo State, the police arrested eleven local government councillors along with 300 others who had gone to the state House of Assembly to protest the reduction of their tenure from three to two years.<sup>44</sup> In the case of Bayelsa State, where new local governments were created, some councillors have taken the governor and chairs of the local government councils to court because they believe that it is illegal to share FA funds with new and illegal local governments. These chairs also went to court to protest that their deployment to new local governments is illegal and, in fact, a way for state governments to disenfranchise the people.<sup>45</sup>

However, many governors claim that a majority of chairs and councillors of local governments only sit down to share money drawn from the FA and rarely embark on development projects. President Obasanjo has publicly chided the chairs over this issue. The governors have been at pains to point out that the chairs of local governments do not have the powers they had under the 1989 Constitution and that they should be more enlightened on this matter. In addition, the governors are angry that the federal government deals directly with local government councils. They argue that the 1999 Constitution, Section 162(6), provides for a state joint local government account into which the statutory allocation from the federal and state governments accruing to the local governments should be deposited.

The states are therefore opposed to what they perceive as attempts by the federal government to relate directly to local governments. They cite, as evidence of federal interference in their area, the fact that, without their knowledge and involvement, the federal

government gave money to local government chairs to buy security vehicles and gadgets for the maintenance of law and order at the local level. The state governors are the chief security officers of the state and should, they argue, be involved in this kind of arrangement.

## ADEQUACY AND FUTURE OF THE DISTRIBUTION OF POWERS AND RESPONSIBILITIES

Perhaps it is too early to assess the adequacy of powers and responsibilities with regard to the component units of the Nigerian federation. However, when one considers how the 1999 Constitution was promulgated and the reactions to it since May 1999, it may be argued that there is a need to revisit the legislative lists pertaining to the distribution of powers and responsibilities.

The 1995 Draft Constitution was the result of a national constitutional conference. If that conference captured the mood of Nigerian political elites at all, it was to point out that the federation was too centralized. The result was the transfer of functions such as agriculture, education, and housing from the concurrent legislative list to the residual legislative list.

Yet in 1999 the document presented as the Constitution did not reflect some of the conclusions of the 1994-95 constitutional conference. Why was this so? The military rulers were wary of the centrifugal forces in the polity, which gave the impression that the politicians had taken civil war for granted or had forgotten the bloodbath of the late 1960s. Quite a number of the young politicians on the scene had either been children or young adults at that time. For the military rulers, what Nigeria needed was still a strong and interventionist central government to keep the country together and to provide leadership in development.

The operation of the Constitution so far indicates widespread dissatisfaction with the distribution of powers and responsibilities among the three tiers of government. There are also loud complaints about the inadequacy of the tax powers allocated to the states and local governments in relation to their functions. There are widespread pressures for a constitutional review or a national conference that would deal with the apparently predatory and overwhelming federal government. That a former military ruler is the president does not help matters. Basanjo's style of governance is certainly not sensitive to the delicate compromises required in a federal polity. The result is that a reaction against the president's style tends to get identified as a reaction against the federal government.

With regard to the adequacy of fiscal or tax powers, it is clear that all tiers of government have been complacent about generating needed revenues. The overdependence on the FA is not conducive to the fiscal autonomy and accountability of the component governments of the Nigerian federation. One may wonder if revising the tax powers would make any difference if the appropriate authorities do not collect these taxes. Internally generated revenue and accountability is an essential part of federal autonomy.

The future of the distribution of powers and responsibilities among the three tiers of government in Nigeria seems to indicate a coming period of exciting debate. As the Constitution review exercise continues, the pressures for a review of the legislative lists that would find in favour of states and local governments may be expected to increase. Centripetal forces do justify the need for a very strong federal government; however, it does seem as though a tilt in favour of states and local governments with regard to both the distribution of powers and responsibilities and taxation will not seriously weaken that government. In its relations with state governments, it does seem that local government councils will continue to have problems protecting their autonomy from the manipulation of

state governments. The current trend of state interference in local government matters may not change significantly in the near future.

## CONCLUSION

In this chapter I argue that Nigeria’s federal Constitution of 1999 is a product of its sociopolitical and cultural history. Thus, the constitutional distribution of powers and responsibilities is a reflection of Nigeria’s experience over time.

I also point out that the inspiration for a strong federal government in Nigeria has been dominantly derived from a long period of military rule (almost thirty out of Nigeria’s forty-four years since Independence). The logic behind the constitutional distribution of powers and responsibilities is to build a federation with a strong federal government - one that is able to keep the country together. This is clearly evident in the evolution of the constitutional distribution of powers, which indicates strong centripetal (if not unitarist) traits since Nigeria’s civil war (between 1967 and 1970). However, the maintenance and management of the distribution of powers and responsibilities have been problematic, often demonstrating gaps between constitutional provisions and constitutional practice. Ironically, while the 1999 Constitution opts for a strong federal government, in practice centrifugal forces have been pressing for greater powers and responsibilities for state and local governments.

As Nigeria revisits its Constitution, it seem as though, in response to popular demands, the distribution of powers and responsibilities among component governments of the federation may tilt in favour of subnational units without necessarily creating a weak central government. After all, given Nigera’s past, many Nigerians still believe that there is a need for a reasonably strong federal government.

## NOTES

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4 James Coleman, *Nigeria: A Background to Nationalism*, (Berkeley: University of California Press, 1958) p. 30; J.P. Mackintosh, *Nigerian Government and Politics* (London: Allen and Unwin, 1966).

5 General Yakubu Gowon’s Broadcast on 26 May 1968; see Federal Republic of Nigeria, *Faith in Unity* (Lagos: Federal Ministry of Information, 1970), p. 108.

6 “Petro-naira” refers to the revenue accruing from the sales of petroleum in Naira, Nigeria’s currency.

7 Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria, 1979*, Section 274 (5d).

8 The National Youth Service Corps was designed by the Gowon regime in 1973 to promote national unity by deploying young graduates of higher educational institutions to states other than their own for one year of national service.

9 Federal Republic of Nigeria, *Portrait of a New Nigeria: Selected Speeches of IBB* (n.p.: Precision Press, c. 1987), pp. 48-49.

10 Federal Republic of Nigeria, *The Constitution of the Federal Republic of Nigeria, 1999*, Exclusive Legislative List, Second Schedule, Part 1, Item 68 (1999 Constitution).

11 See the table below for a summary of revenue-sharing formula (vertical)\* since 1981

<b>Formula (proposed and operational)</b>	<b>Revenue</b>		<b>Allocation</b>	<b>(%)</b>
	<b>Federal government</b>	<b>State government</b>	<b>Local government</b>	<b>Special gunds#</b>
1981	55	30.5	10	4.5

1989	55	32.5	10	2.5
1990	50	30	15	5
January 1992	50	25	20	5
June 1992-April 2002	48.50	24.00	20.00	7.50
May 2002 (Executive Order)	56.00	24.00	20.00	-
July 2002 (Executive Order)	54.68	24.72	20.60	-
RMAFC proposal (December 2002)	46.63	33.00	20.37	-

\* On the horizontal plane RMAFC recommended (in December 2002) the following sharing formula: equality, 45.23 percent; population, 25.60 percent; population density, 1.45 percent; internal revenue generation efforts, 8.31 percent; landmass, 5.35 percent; rural roads/internal waterways, 1.21 percent; potable water, 1.50%; education, 3.00 percent; and Health, 3.00 percent.

# The Supreme Court ruling in April 2002 nullified the allocation for special funds, which the federal government had previously monopolized.

See Theophilus Y. Danjuma, "Revenue Sharing and the Political Economy of Nigerian," J. Isawa Elaigwu, Paul C. Logans and Habu S. Galadima, eds., *Federalism and Nation Building in Nigeria: The Challenges of The 21st Century*, (Abuja: NCIR, 1994); *Vanguard* (Lagos), 22 February 2004, pp. 12-15; *Daily Trust* (Abuja), 9 January 2004, p. 2.

12 *Vanguard* (Lagos), 18 December 2003, pp. 1-2; *Daily Trust* (Abuja), 9 January 2004, p. 2.

13 *Daily Trust* (Abuja), 18 December 2003, pp. 1-2.

14 *This Day* (Lagos), 5 July 2004, p. 1.

15 The federal pyramid has the federal government at the apex and widens at the middle and lower levels as state and local governments act out their autonomy in governance. A hierarchical structure, as exists in unitary governments, would not provide for the autonomy of the various component units of the state.

16 This feeling came across strongly at the Global Dialogue on Federalism Roundtable on "Distribution of Powers and Responsibilities" held in Jos, Nigeria, on 15 September 2003.

17 Feeling captured from the roundtable, Jos, 15 September 2003.

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19 Billy J. Dudley, *Instability and Political Order: Politics and Crisis in Nigeria* (Ibadan: Ibadan University Press, 1973), p. 63. Also, in Nigeria, *Proceedings of General Conference on Review of Constitution* (Lagos: Government Printer, 1958), p. 218; also quoted in Tekana N. Tamuno, "Separatist Agitations in Nigeria," *Journal of Modern African Studies* 8, 4 (September 1970): 568.

20 Kalu Ezera, *Constitutional Developments in Nigeria*, 2nd ed. (Cambridge: Cambridge University Press, 1964), pp. 187-188; and Tekana N. Tamuno, "Separatist Agitations in Nigeria," pp. 560-572.

21 See detailed account in Mackintosh, *Nigerian Government and Politics*, p. 604; *Daily Times* (Lagos), 13 January 1963; *Daily Express*, 22 December 1964; *Daily Express* (Lagos), 30 December 1964.

22 Jonah I. Elaigwu, "Subnational Units and Political Developments in New States: An African Experience" (Ph.D. diss., Stanford University, 1976), p. 82.

23 Jonah I. Elaigwu, *Gowon: The Biography of a Soldier-Statesman* (Ibadan: West Publisher Limited, 1985), p. 74.

24 Federal Government of Nigeria, *Report of the Constitutional Conference Containing the Resolutions and Recommendations*, vol. 2 (Abuja: National Assembly Press, 1995), p. 61.

25 Elaigwu, *Gowon*, 154.

26 Federal Government of Nigeria, "Constitution (Suspension and Modification) Decree (1966, No. 1)," in *The Laws of the Federal Republic of Nigeria* (Lagos: Government Printer, 1966), p. A3.

27 Ibid.

28 See Emergency Power Act, 1962.

29 L.O. Aremu, "Intergovernmental Relations in Nigeria: A Legal Overview," *Quarterly Journal of Administration* 14, 2 (1980): 137.

30 J.P. Mackintosh, *Nigerian Government and Politics* (London: Allen and Unwin, 1966); N.U. Akpan, *The Struggle for Secession, 1966-70* (London: Frank Cass, 1972); Abubakar Y. Aliyu, ed., *The Return to Civil Rule* (Zaria: Institute of Public Administration, 1983); Eme O. Awa, *Federal Government in Nigeria: A Study of Development of the Nigerian State* (Berkeley: University of California Press, 1964); Eme Awa, *Issues in Federalism* (Benin City: Ethiope Publishing Corporation, 1976).

31 See Jonah I. Elaigwu, "The Military and State Building: Federal-State Relations in Nigeria's 'Military Federalism,' 1966-1967," *Readings on Nigerian Federalism*, Bolaji Akinyemi, Patrick.D. Cole, and Walter Ofonagoro, eds. (Lagos: Nigeria Institute of International Affairs, 1976), pp. 155-182; Jonah I. Elaigwu,



“Military Rule and Federalism in Nigeria,” *The Foundations of Nigerian Federalism, 1960-1995*, vol. 3, J. Isawa Elaigwu and Rafiu A. Akinjide, eds. (Jos: Institute of Governance and Social Research, 2001), pp. 166-193.

32 Federal Republic of Nigeria, “Constitution (Miscellaneous Provision) (No. 2) Decree No. 27, 1967,” in *The Laws of the Federal Republic of Nigeria*, pp. A133-137.

32 The Federal Republic of Nigeria, *Guidelines for Local Government Report* (Kaduna: Government Printer, 1976), para. 1.

34 For intergovernmental relations in Nigeria, see J. Isawa Elaigwu, “Intergovernmental Relations in Nigeria,” *Indian Journal of Federal Studies* 2, 2 (June 2001): 65-78.

35 See Federal Republic of Nigeria, *Constitution of the Federal Republic of Nigeria, 1999*, Third Schedule, Part 1, Item C, Section 8(1b), for the Federal Character Commission’s role in the implementation of the Federal Character Clause. For detailed discussions of federal character, see Alex Gboyega, “Federal Character or the Attempt to Create Representative Bureaucracies in Nigeria,” *International Review of Administrative Service* 50 (1984): 17-24; Eghosa E. Osaghae, “The Complexity of Nigeria’s Federal Character Principle,” *Journal of Ethnic Studies* 16, 3 (Fall 1988): 1-25; Peter Ekeh and Eghosa E. Osaghae, eds., *Federal Character and Federalism in Nigeria* (Ibadan: Heinemann, 1989).

36 The six zones adopted and the states allocated to each are:

North-Central	North-East	North-West	South-East	South-South	South-West
Benue	Adamawa	Jigawa	Abia	Akwa-Ibom	Ekiti
Kogi	Bauchi	Kaduna	Anambra	Bayelsa	Lagos
Kwara	Borno	Kano	Ebonyi	Cross River	Ogun
Nassrawa	Gombe	Katsina	Enugu	Delta	Ondo
Niger	Taraba	Kebbi	Imo	Edo	Osun
Plateau	Yobe	Sokoto		Rivers	Oyo
		Zamfara			

37 From the 2000 manpower statistics of federal ministries and extraministerial departments, 16.5 percent of the total federal workforce were from the North-Central geopolitical zone, 8.6% from the North-East, 9.4 percent from the North-West, 20.7 percent from the South-East, 15.8 percent from the South-South, 28.7 percent from the South-West, and 0.3 percent from the Federal Capital Territory. The North complained against domination of the federal civil service by the South despite its higher population. See Shuaibu Gimi “The Face of Marginalization: Yorubas Consolidate Dominance” in *Weekly Trust*, September 20-26, 2002, pp. 1-3.

38 *This Day*, 21 and 23 May 2004, p. 1; *Vanguard*, 28 May 2004, p. 14.

39 *Vanguard* (Lagos), 4 May 2000, p. 2.

40 Anambra State established a vigilante group, called “Bakassi Boys,” to help combat crimes. *This Day*, Lagos, 18 August 2000, p. 13.

41 *Vanguard*, Lagos, 1 January 2004, p. 7.

42 *Punch*, Lagos, 7 July 2001, pp. 1 and 2.

43 *Vanguard*, Lagos, 23 August 1999, pp. 1 and 2.

44 *Vanguard*, Lagos, 9 March 2001, p. 1.

45 *Punch*, Lagos, 7 July 2001, pp. 1 and 2.