A GENERAL OVERVIEW OF THE
1999 CONSTITUTION

BY PROFESSOR I.E. SAGAY, SAN.

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INTRODUCTION

The 1999 Constitution has been dogged by problems and controversies right from the moment of its release in May 1999. As Chief Rotimi Williams has observed, it tells a lie about itself when it proclaims as follows:

“WE THE PEOPLE of the Federal Republic of Nigeria;........ DO HEREBY MAKE ENACT AND GIVE TO OURSELVES the following Constitution”

As probably every enlightened Nigerian knows, we the people of the Federal Republic of Nigeria did not make, enact or give ourselves the 1999 Constitution. A few persons selected by the Military Junta collected some views, collated them and wrote a report. The Military Government thereafter, made, enacted and gave to their Nigerian subjects, the Constitution. The document was in fact – hidden away from Nigerians, until a few days before the handover date of 29th May 1999. Thus the present group of political rulers only got to know what their functions and powers were after they were elected to perform those duties and to exercise those powers. This applied not only to the Executive and Legislative arms of Government, but also to the Judiciary, the third arm of government. Just as the executive arm was ignorant of the scope and extent of its powers, just as the elected Legislators were unaware of the Legislative lists and the comparative powers of the States and the Centre, so too were the courts ignorant of their comparative jurisdictions, basis of appeals, or even the types of Courts that were to be established by the Constitution. The whole
transition programme, was for the politicians, Judges and the civil populace, a sheer leap in the dark.

By contrast, prior to the 1960 Constitution, there had been meetings at progressive levels of society and the polity, leading to the national conference of 1950, and the Macpherson Constitution (1951), which was progressively amended by the consensus of political party leaders at Constitutional Conferences, in 1954, 1957 and 1958.

Again it will re-called that the 1979 Constitution was promulgated into law on 21st September 1978, before the ban on political parties was lifted, and more than one year before the civilian government took office.

Although the 1979, 1989 and 1995 Constitutions contained the same false declaration, the degree of culpability in those cases is lower than that in the 1999 Constitution because the drafts and texts of those Constitutions were prepared by the representatives of the people, after vigorous, acrimonious and indeed at times tense debates at the Constituent Assemblies. It should be noted that although there was voters apathy in the election into the 1994 Constitutional Conference coupled with an undemocratically high number of Government appointees (one quarter), the debates were nevertheless thorough, and genuine and the outcome was in many aspects far superior to the 1999 Constitution. For example in line with true Federalism it contained clear provisions on power shift amongst the six geo-political zones of the country and it made primary education and medical consultation free. It also formally instituted the six geographical zones of the country in the Constitution.
1. The Federal Imperative

However, it is my view that the fundamental problem of the 1999 Constitution, is the subversion of Federalism, which is the basis for the establishment of Nigeria as one country.

From the antecedents of the nationalities constituting Nigeria and the Political history of these various entities from the 19\textsuperscript{th} Century to 1950 it was clear that the only viable form of union between these entities, was federal or confederal. Hence the General Constitutional Conference in 1950 chose a federal system of government which was later institutionalized in the 1951, 1954, 1957, 1960, 1963 and to a much lesser extent (as a consequence of military rule) the 1979, 1989 and 1999 Constitutions.

The experience of Nigeria’s nationalities during the 15 years of Military rule before the present dispensation in 1999, sharpened the realization that the country could only remain together, under a true federal system. Hence the call for devolution of powers from the federal ‘state’ to the states and the clamour for the re-structuring of the Federation. Given the variety of independent nations and communities in the present territory of Nigeria which had enjoyed centuries of separate existence, before the British forcefully brought them together as one country, federalism as the form of association or government in Nigeria, was inevitable.

The imperative for federalism and its inevitable, indeed its inexorable role in Nigeria’s system of governance was clearly revealed in the following passage in the Supreme Court’s judgment in the co-called resource control case on 5\textsuperscript{th} April 2002.
“Until the advent of the British colonial rule in what is now known as the Federal Republic of Nigeria (Nigeria, for short), there existed at various times various sovereign states known as emirate, kingdoms and empires made up of ethnic groups in Nigeria. Each was independent of the other with its mode of government indigenous to it. At one time or another, these sovereign states were either making wars with each other or making alliances, on equal terms. This position existed throughout the land now known as Nigeria. In the Niger Delta area, for instance there were the Okrikas, the Ijaws, the Kalabaries, the Efiks, the Ibibios, the Urhobos, the Itsekiris, etc. Indeed certain of these communities (e.g. Calabar) asserted exclusive rights over the narrow waters in their area. ” (See A.G. Federation v. A.G. Abia State & Ors [2002] 16 WRN 1 at p. 68.

This was the thrust and emphasis in Chief Obafemi Awolowo’s famous but generally misunderstood commentary on Nigeria, made 55 years ago in his book Path to Nigerian Freedom; said he:

“Nigeria is not a nation. It is a mere geographical expression. There are no ‘Nigerians’ in the sense as there are ‘English’, ‘Welsh’ or ‘French’. The word ‘Nigerian’ is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not.

There are various national or ethnical groups in the country. Ten such main groups were recorded during the 1931 census as follows:
(1) Hausa, (2) Ibo, (3) Yoruba, (4) Fulani, (5) Kanuri, (6) Ibibio, (7) Munshi or Tiv, (8) Edo, (9) Nupe, and (10) Ijaw. According to Nigeria Handbook eleventh edition, ‘there are also a great number of other small tribes too numerous to enumerate separately, whose combined total population amounts to 4,683,044.’

It is a mistake to designate them ‘tribes’. Each of them is a nation by itself with many tribes and clans. There is as much difference between them as there is between Germans, English, Russians and Turks, for instance. The fact that they have common overlord does not destroy this fundamental difference.

The languages differ. The readiest means of communication between them now is English. Their cultural backgrounds and social outlooks differ widely; and their indigenous political institutions have little in common. Their present stages of development vary.” (pp. 47-48)

Not only was this statement absolutely correct, it is even more accurate about today’s Nigeria than the Nigeria of the 40s.

As Nwabueze has rightly stated, a federal system has the following characteristics.

i) The power sharing arrangement should not place such a preponderance of power in the hands of either the central or regional government to make it so powerful that it is able to bend the will of the others to its own.
ii) Federalism presupposes that the central and regional governments should stand to each other in a relation of meaningful independence resting upon a balanced division of powers and resources. Each must have powers and resources sufficient to support the structure of a functioning government, able to stand on its own against the other.

iii) From the separate and autonomous existence of each government and the plenary character of its powers within the sphere assigned to it, by the constitution, flows the doctrine that the exercise of these powers is not to be impeded, obstructed or otherwise interfered with by the other government, acting within its own powers.¹

Contrary to these basic and fundamental principles of Federalism, what immediately strikes even the most casual peruser of the 1999 Constitution is the almost total abandonment of the concept of federalism, in its provisions. Thus although the document is entitled “Constitution of the Federal Republic of Nigeria” it is infact a Unitary type of Constitution, centralizing all important powers at the federal level, leaving the States prostrate and atrophied in terms of powers and resources.

2. The Legislative Lists in the 1999 Constitution
   (i) The Exclusive Legislative list

The legislative lists clearly indicate the overwhelming dominance of the Federal Government. The items in the exclusive legislative list of the 1999 Constitution are 68 in number compared to 66 in the 1979, 1989 and 1995 Constitutions and 45 in the 1060/63 Constitutions. This of

¹ Federalism in Nigeria, under the Presidential Constitution Sweet & Maxwell, 1983, Chapter 1, emphasis Added.
course does not tell the whole story. It is the nature of the actual items on the list that reveals the dominant federal powers.

The list includes not only matters which should be exclusively within the competence of states, but also many more matters which should have rightly been in the concurrent list, i.e., within Federal and States competences.

The following matters which come under the Exclusive Legislative List, should have come under the concurrent or shared list.

(a) **Census (item 8).** There is no reason why a state government cannot organise a population census of its state. The federally organised censuses have since 1962 been riddled by controversy and surrounded by the suspicion that they were intended to generate some political and economic effects. A state should be able to organise its own census to enable it plan its own development programme. The 2006 National census which puts the population of Lagos State at 9 million, less than the population of Kano state, cannot be taken seriously. Experts consider the Lagos State population as nearing the 20 million mark. Indeed, a government such as that of Lagos State into which there is an endless flow of job and fortune seekers, needs to know its true population for planning purposes. How many schools, hospitals, roads, housing estates, etc, should be established, and where they should be located. Indeed I recommend not only that States and the Federal Government should be entitled to conduct censuses, but that population should no longer be a criterion for revenue allocation. It should be deleted from Section 162 (2) of the Constitution. This should
also apply (to a lesser extent) to political representation and delineation of constituencies. Once population is de-emphasised in revenue allocation and political representation, tension will be eliminated from census exercises and more accurate figures will emerge.

(b) **Labour, Trade Unions, Industrial Relations (item 34).** Placing these items in the exclusive legislative list, is grossly anomalous. State and Local Governments employ workers and the question of the wages, conditions of service, workers’ welfare, industrial disputes etc., in relation to state and local government workers and workers in state based enterprises, should be entirely a matter for the state concerned. The series of labour crises arising from the issue of a national minimum wage, would not have arisen, if each state had had the autonomy to negotiate separately with labour unions in the state. States in Nigeria have different levels of economic power and development and should be able to arrive at separate and independent minimum wage and terms of employment agreements with their workers. A 'national minimum wage' and Federalism are a contradiction in terms. There can be no uniform wages system in a true Federation.

(c) **Mines, Minerals including Oil Fields, Oil Mining, Geological Surveys and Natural Gas (Item 39).** This issue is presently the most contentious and explosive in the national political agenda. Having been dispossessed for more than 30 years of their rights over their natural resources, the nationalities of the Niger-Delta are now demanding those rights back. This provision has merely worsened an already tense situation. It is most unlikely that the
good government, order and peace of Nigeria (see S. 4(2) of the 1999 Constitution) can be achieved, if the Federal Government, claims 100% ownership the of Niger-Delta's natural resources. Obviously, this item (39 on the Exclusive Legislative list) and section 44(3) have to be radically modified or repealed completely if there is to be unity progress and justice in this country.

(d) **Sovereignty over Natural Resources.** As has already been pointed out, item 39 of the exclusive Legislative List, gives the National Assembly the sole and exclusive power to legislate on mines, minerals including oil fields, oil mining, natural gas etc.

Ironically, this is confirmed under section 44(3) which itself is contained in the Chapter four, the chapter on Human Rights. After providing in Section 44(i) that no property shall be compulsorily acquired in any part of Nigeria except in a manner and for the purposes prescribed by a law that requires prompt payment of compensation and gives the owner of the property right of access to court for the determination of his interest in the property and the amount of compensation he is entitled to, the Constitution immediately contradicts itself by excluding the human and property rights of minerals (oils and solid) producing communities of this country, by stating that, notwithstanding the human and property rights provisions of section 44(i) and (ii), the entire properties in and control of minerals, mineral oils and natural gas in under or upon land, upon territorial waters and Exclusive Economic Zone of Nigeria, is vested in the Federal Government. This provision under the Human Rights Chapter, expropriates the properties of the mineral producing areas, a
100%. This subsection constitutes a contempuous disregard of the rights of the people of the mineral producing States and Communities, in their own natural resources.

It is for this reason that the National Political Reform Conference, 2005 made the following modest recommendations on the question of ownership, management and control of petroleum resources.

"Oil and Mineral Resources"

(a) The various mineral resources should be controlled and managed by the Government of the Federation through an arrangement which involves Oil Producing States and Communities; in particular, the rights and privileges which the Mineral and Mining Act of 1999 confers on States, Local Government, Communities and land owners should equally be extended to the case of petroleum resources;

(b) Derivation principle should be given greater prominence than as at now in the distribution of the Federation Account.

(c) On resource control, in addition to the points on which agreement was reached in the Committee on Revenue Allocation and Fiscal Federalism, the Conference recommends the following package:

i) A clear affirmation of the inherent right of the people of the oil producing areas of the country not to remain mere spectators but to be actively involved in the management and control of the
resources in their communities by having assured places in the Federal government mechanisms for the management of the oil and gas exploration and marketing.”

This provision constitutes some improvement on the current constitutional provisions and will need to be formulated in a legal drafting language.

In addition to the above, I recommend the total incorporation of Section 140 and 141 of the 1963 (Republican) Constitution into the 1999 Constitution. I reproduce Sections 140 and 141 (with minor alterations) below thus:

“140. (1) There shall be paid by the Federation to each State a sum equal to fifty per cent of –
(a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in that State; and
(b) any mining rents derived by the Federation
(c) any petroleum profits tax, (i) bonuses, (premium), (iii) licencing, (iv) prospecting, (v) mining and other fees, (vi) rents, (vii) oil terminal dues, etc from within that State

(2) The Federation shall credit to the Distributable Pool Account a sum equal to thirty per cent of –
(a) the proceeds of any royalty received by the Federation in respect of minerals extracted in any State; and
(b) any mining rents derived by the Federation

c) any petroleum profits tax, (i) bonuses, (premium), (iii) licencing, (iv) prospecting, (v) mining and other fees, (vi) rents, (vii) oil terminal dues, etc from within any State.

(3) For the purposes of this section the proceeds of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or other repayments relating to those receipts have been deducted therefrom or allowed for.

(4) Parliament may prescribe the periods in relation to which the proceeds of any royalty or mining rents shall be calculated for the purposes of this section.

(5) In this section “materials” includes mineral oil.

(6) For the purposes of this section the continental shelf of a State shall be deemed to be part of that State.

Distribution 141. – There shall be paid by the Federation to each State at the end of each quarter sums Distributable equal to the fraction arrived at by dividing the Distributable Pool Account amount standing to the credit of the Distributable Pool Account by the number of States in the Federation –

(e) Police and other government security services (item 45). In all Federations all over the World, both the Federal and State authorities have their own police forces. In the U.S.A., the
Federal authorities have the F.B.I., and the state and municipal authorities, have Police Forces. Towns, municipalities, even universities, have police establishments. In the U.K. which is not a federation, counties have their own Police establishments. There is therefore no reason why States cannot have their own Police Forces in Nigeria, particularly since the Nigeria Police Force is put under the exclusive control of the Federal Government. The frequent claims by the Government of Lagos State that the increasing incidents of armed/ethnic violence and armed robbery in the State was compounded by the fact that whilst the Governor was invested with responsibility for security in the State, the Police, was exclusively under the control of the Federal Government, cannot be faulted. In depriving States of the right to establish their own Police Forces, or have operational command of the Nigeria Police in their States, the Governors are given responsibility without power.

(f) Police: Operational Control, Discipline and Promotion

Police Force By this Section 214, the Police Force in Nigeria shall be the Nigeria Police under the full and exclusive control of the Federal Government. The following section (215) establishes clearly not only that the Nigeria Police is owned and controlled exclusively by the Federal Government, but that the State Governors have no authority whatsoever over the Police. Section 215(4) provides as follows:

“(4) Subject to the provisions of this section, the Governor of a State or such Commissioner of the Government of the State as he may authorize in that behalf, may give to the
Commissioner of Police of that State such lawful directions with respect to the maintenance and securing of public safety and public order within the State as he may consider necessary, and the Commissioner of Police shall comply with those directions or cause them to be complied with:

Provided that before carrying out any such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorized in that behalf by the President for his directions.”

Here again, there is a clear undermining of the Federal status of this country. In the 1954 Constitution, the Regions (States) were empowered to establish local government police authorities and the Northern and Western Regions established them.

The total impotence of states regarding the control and operation and discipline of the Police Force is confirmed by Powers given the Nigeria Police Council of which the State Governors are members.

This body is merely advisory to the President on the organization and administration of the Nigeria Police presided over by the President with a membership which includes all the State Governors. The functions expressly exclude matters relating to the use and operational control of the Force or appointments, and discipline of its men. The exclusive Federal control of the
Police Force is sustained, thus strengthening the case for a State Police Force.

(g) **Profit and Capital Gains (Item 59)** These in fact should be exclusively state subjects, because they arise primarily from succession, which is a matter under State jurisdiction.

(h) **Prescription of Minimum Standards of Education at all Levels.** This should be a joint Federal/States responsibility, and not exclusively a Federal matter.

(i) **Registration of Business Names.** It is puzzling why this routine type of exercise concerning establishments which are going to operate in States, should be an exclusive Federal subject matter.

Other matters which ought to be transferred from the Exclusive Legislative List to the Concurrent Legislative list are: Prisons, Railways and stamp duties. (See items 48, 55, 58, respectively) Value Added Tax being a tax on goods and services within a State, should be a State tax and not a Federal tax.

The V.A.T. which was first introduced by the Military Regime in 1993. It is essentially a sales tax in that it is a tax based on sales of goods, services. It is therefore essentially a subject for States, rather than the Federal Government. It is not listed in either the Exclusive Legislative List nor in the Concurrent Legislative List. It is therefore a residual matter, i.e. within the exclusive jurisdiction of States. The present administration of VAT by the Federal Government is therefore illegal.

(ii) **The Concurrent Legislative List.**
Many matters which should be exclusively state controlled can be found in this shared subjects list. These include:

a) **Division of revenue among the local governments in the States (item (1) (a) (iv)**

Federal Government intervention in the process of the division of revenue between the local governments within a State, (S. 162(5)) is an infringement of federalism, though valid under the present constitution.

In this regard, it is heartening that the Supreme Court declared in A.G. Abia & Ors vs. A.G. Federation [2002] 6 NWLR (Pt. 763) 264 that the direct funding of primary education by the Federal Government, through local governments is an infringement of the autonomy of states and that such funds should be paid directly to state governments.

b) **Electric Power**

Although Electrical Power is placed in the concurrent list as Item 14(b) of the List, it limits the State Governments’ powers in electricity generation, transmission and distribution to "areas not covered by the national grid system within that State". In other words States, can only organise the generation, transmission and distribution of electricity under a rural electricity scheme. They are in effect prohibited from establishing or organising any system of electricity supply in competition with the dead Power Holdings Company Nigeria (PHCN). States are thus condemned to the underdevelopment which PHCN represents. This explains
why the Federal Government has had to play such a major role in the independent power project of the Lagos State Government intended to provide uninterrupted electrical power to the people of Lagos State through its agreement with Enron. The Constitutional need for the consent of the Federal Government before this project could be implemented, led to undue Federal Government intervention, and obstructions almost amounting to sabotage by some Federal operatives and agencies, including the monster PHCN itself.

Acting in total abuse of its power, the Federal Government arbitrarily and whimsically suspended this power project agreement within 9 days of signing it, thus frustrating he Lagos State Government’s tremendous endeavours in this regard, but also creating a major contractual liability for itself and Lagos State.

There is no reason why the right to generate and distribute electrical power cannot be made an open one for the Federal Government, States and private companies. Each can then invest in the generation, of power, which could be sold to consumers (industries, enterprises, households) on a commercial basis. If the right to generate and distribute power is liberalized, Nigeria will emerge out of its present dark ages nightmare, and our economy and standard of living will be tremendously improved.

(iii) Whole Sale Transfer of Subject Matter from the 1963 Concurrent Legislative List to the 1999 Exclusive Legislative List
The source of the overwhelming legislative powers of the Federal Government is established by a comparison between the 1963 (Republican Constitution) and the 1999 Constitution. This reveals that the makers of the 1999 Constitution, transferred legislative matters whole sale from the Concurrent Legislative list of the 1963 Constitution, to the Exclusive Legislative list of the 1999 Constitution. The subjects affected are listed in the table below.

<table>
<thead>
<tr>
<th>1963 Constitution</th>
<th>Item No.</th>
<th>1999 Constitution</th>
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<td>2</td>
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<td>7. Higher Education</td>
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<td>27(Concurrent List)</td>
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<tr>
<td>8. Labour, Conditions of Labour, Industrial Relations, Trade Unions and</td>
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</table>
3. **Establishment and control over Local Governments**

By Section 3(6)

The 1999 Constitution specifically provides that “there shall be 768 Local Government Areas in Nigeria” It then goes in the first schedule, to list most meticulously the names of all the 768 Local Government areas and their individual capital cities. By section 8(5) even after a state has completed the process of the creation of local governments, the names and headquarters of such local governments must be approved by the National Assembly.

Again, this provisions constitutes a violation of Federalism. This means that the creation of local government is a Federal and State matter and not State exclusive matter. In a true Federation, states are the only competent local government creating bodies and not the Federal Government. States are free to create as many local governments as they wish in a true Federation. Fixing the number of local government areas as has been done in section 3)6) effectively
takes local government out of the hands of states into the hands of the Federal Government because local government creation becomes a constitutional matter, involving the National Assembly in a decisive manner. – Section 8(5)

The tedious and rigid procedures for the creation of local governments confirms that inspite of the provisions of section 7(i) purportedly granting states, powers to create local governments this, can never be realized in practice under this Constitution. The following obstacles must be surmounted before a local government area can be created.

i) Request by at least two-thirds of the representatives of the area in the State House of Assembly.

ii) At least two-thirds of the representatives of the area in the local government council or councils concerned.

iii) Referendum in which at least two-thirds of the electorate of that area approve the creation of the local government.

iv) Approval by a simple majority of the local governments in the State.

v) Approval by two-thirds majority of each House of the National Assembly.

Section 162(5) – (7) states how amounts due to the local governments from the Federation should be divided and allocated. The National Assembly is empowered to prescribe the manner in which these monies will be disbursed to local governments. Again this constitutes a subversion of federal principles. Local governments in a Federation are supposed to be a matter exclusively within the domain of state authority. The Federal Government should not have direct dealing with local governments in a Federation. The confusion arising from this dualisation of authority in State creation, became manifest in the
attempt by the Government of Lagos State to create new local government areas in 2004. In *A.G. of Lagos State v. A.G. Federation* [2005] 2 NWLR 1 the Supreme Court declared that at though the Government of Lagos State had validly created the new local governments, the latter remained inchoate (dormant) until their creation was approved by each House of the National Assembly.

According to Uwais, CJN, in that case (p. 69)

“What follows from this is that the Laws enacted by Lagos State that is Law No. 5 of 2002 and the 2004 Law are both valid Laws since the House of Assembly of Lagos State has the power under sections 4 subsections (6) and (7), 7 subsection (1) and 8 subsection (3) of the Constitution to legislate in respect of the creation of new local government areas and local government councils which are one and the same for the purpose of section 162 subsections (3) and (5) of the Constitution. However, in the context of section 8 subsection (5) and section 3 subsection (6) such Laws cannot be operative or have full effect until the National Assembly makes the necessary amendment to section 3 subsection (6) and part I of the first schedule to the Constitution. The effect of this is that the Laws are valid but inchoate until the necessary steps as provided by the Constitution are taken by the National Assembly.”

This has resulted in utter confusion. The creation of local government should be a matter exclusively for the States. Local government areas should not be listed or reflected anywhere in the Constitution. The Federal Government should not allocate any funds to local
governments. They should be created and funded exclusively by State Governments. It follows therefore that a State should be entitled to create as many local governments as it wishes, and that the Federation of Nigeria like all other federations in the world, should be one between a central (federal) government and regional entities (states). There is nothing like a 3-tiered federation, involving local governments, States and the Federal Government. The 3-tiered Federation is an illegitimate Nigerian creation.

4. **Election of the President and Governors**

(132(2) to be deleted)

(i) The term of office of a President or Governor shall expire 3 years and 9 months after he takes the oath of office.

(ii) The Chief Justice of the Federation or the Chief Judge of a State, as the case may be, shall act as President or Governor until elections for President or Governor have been held and all election petitions against such elections have been concluded.

(iii) Elections for the offices of President or Governor will only be held after the end of the term of office of an incumbent President or Governor.

5. **Appointment of a National Electoral Commission**

There shall be a National Electoral Commission, constituted by a Chairman and 6 other members. The chairman and members of the Commission shall be nominated by an Electoral Commission Selection Assembly composed of:
1. The Chief Justice of Nigeria as Chairman
2. 3 Representatives of the Senate
3. 5 Representatives of the House of Representatives
4. 2 Representatives from each of the following bodies:
   (i) The Nigerian Bar Association
   (ii) The Nigerian Union of Journalists
   (iii) Council of Women Societies
   (iv) Nigerian Labour Congress.

(5) 1 Representative from each of the following:
   (i) National Association of Nigerian Students
   (ii) Academic Staff Union of Universities
   (iii) Christian Association of Nigeria
   (iv) National Council of Islamic Affairs

(6) The Electoral Commission Selection Assembly shall invite nominations for membership of the National Electoral Commission from the public. Based on the list of persons so nominated by the general public and members of the Commission, the Election Commission Selection Assembly will nominate the Chairman and the six other members of the National Electoral Commission, and forward these names to the Senate for approval. If any of the nominees fails to receive Senate approval, the Selection Assembly will meet to send a replacement to the Senate for approval.

(7) (i) A member of the National Electoral Commission will be
removed from office, only for misconduct in carrying out his duties, or for any incapacity, making it impossible for him to perform his duties.

(ii) For the removal of a member of the National Electoral Commission to take effect, there must be a resolution to that effect passed by a majority of the members of the Commission which is then approved by the Senate.

(8)  (i) There shall be appointed by the National Electoral Commission, one State Electoral Commissioner for each State of the Federation.

(ii) A State Electoral Commissioner may be removed from office or transferred to from one State to the other by the National Electoral Commission. However removal from office can only arise from misconduct in the discharge of his duties or due to functional incapacity.

(9) The National Electoral Commission shall be funded directly from the Consolidated Revenue Fund of the Federal Government, as approved by the National Assembly.

(10) The term ‘Independent’ is hereby deleted from the Commission’s name. ‘Independence’ is determined from the record and achievement of the Commission, not from nomenclature.

6. Conclusion

I am attaching an appendix containing my recommendations for a modified schedule of Legislative powers. This conforms with or is a return to the original idea of what a federation of Nigerian
communities should be like. Under this scheme the Federal Government is assigned subject matter of a universal character, in which centralized operation will be more beneficial for the whole country, whilst others are assigned either to the concurrent list or left out as residual matters which are better handled by States, the federating units in which the people actually live.

In view of the increased responsibility of the States and the lighter burden on the centre, it is suggested that a new revenue allocation formula should be adopted. In my view, this should roughly be 30% Federal and 70% for States. Local Government Councils are eliminated entirely, since they are to be funded exclusively by State Governments under this scheme. If anyone should feel that the State share is too large, then I must point out that the 70% is to be shared by 36 States. This means technically that the share per State would be 1.94%.
### RECOMMENDED SCHEDULE OF LEGISLATIVE POWERS

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<td>5. Customs</td>
<td>5. Commercial and Industrial Monopolies combines and trust</td>
</tr>
<tr>
<td>7. Extradition</td>
<td>7. Drugs and Poisons</td>
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<td>8. Federal Court, including</td>
<td>8. Electricity</td>
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<td>the Supreme Court</td>
<td>9. Environment</td>
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<tr>
<td>9. Foreign Affairs</td>
<td>10. Establishment, Regulation and coordination of research institutions, except nuclear research</td>
</tr>
<tr>
<td>10. Immigration</td>
<td>11. Evidence</td>
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<tr>
<td>12. Insurance of Corporate Bodies,</td>
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<tr>
<td>Winding up, etc</td>
<td>13. Higher Education</td>
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<tr>
<td>13. Maritime, Shipping and Navigation</td>
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<tr>
<td>14. Marriages other than Moslem</td>
<td>14. Incorporation, regulation and winding up of cooperative societies and local government councils</td>
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<td>And customary marriages</td>
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<td>15. Meteorology</td>
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<td>16. Nuclear Energy</td>
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<td>17. Posts, Telegraph, Telephone</td>
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<td>18. Weights and Measures</td>
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<td>19. Allocation of wave-lengths for wireless, broadcasting and television transmission by joint Federal/State Commission</td>
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<td>2. Antiquities and monuments</td>
<td>3. Arms and Ammunition</td>
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<tr>
<td>4. Census</td>
<td>5. Commercial and Industrial Monopolies combines and trust</td>
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<td>6. Community Banking</td>
<td>7. Drugs and Poisons</td>
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<td>10. Evidence</td>
<td>11. Evidence</td>
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<td>12. Fingerprints, identification and criminal records.</td>
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<td>and local government councils</td>
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<td>15. Mines, Minerals, Oil fields, oil mining, natural gas</td>
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<td>16.</td>
<td>Labour, including trade unions, industrial relations; conditions, safety and welfare of labour; industrial disputes and industrial arbitrations.</td>
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<td>17.</td>
<td>Pensions and gratuities</td>
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<td>18.</td>
<td>Police and other Government Security Services</td>
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<td>19.</td>
<td>Prisons</td>
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<td>21.</td>
<td>Railways, Road and other infrastructures</td>
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<td>22.</td>
<td>Regulation of political parties</td>
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<td>23.</td>
<td>Stamp Duties</td>
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<td>24.</td>
<td>Taxation of incomes, profits and capital gains, except Value Added Tax</td>
</tr>
<tr>
<td>25.</td>
<td>Wireless, broadcasting and television</td>
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