NIGERIA

Introductory Notes

by Enyinna Nwauche, Rivers State University of Science and Technology, Nigeria

I. Origins and Historical Development of the Constitution

In 1914, the Northern and Southern Protectorates of Nigeria were merged by the British colonial administration into one colony by the 1914 Constitution, which vested the legislative and executive powers of the colony in the Governor General. Nigeria's colonial constitutional development was significantly influenced by the Governor Generals appointed to run the colony. In 1921, soon after his appointment, Sir Hugh Clifford revoked the 1914 Constitution and in 1922, a new Constitution was promulgated. This process was apparent again in 1931 when Sir Donald Cameron was appointed Governor General and also in 1945, when Sir Arthur Richards was appointed Governor. It should be noted that each review resulted in the decentralization of power to the regions of Nigeria and more involvement in governance by Nigerians. In 1948 Sir John McPherson became Governor General and under his guidance, the so-called McPherson Constitution was adopted in 1951. This Constitution devolved more power to the regions, making them more autonomous with respect to certain defined areas. In addition, more Nigerians were elected into the regional Houses of Assembly than the appointed official members. Furthermore, the federal House of Representatives became dominated by elected Nigerians. In spite of this, the colonial executive maintained a firm control over law-making.

In 1954 a new constitutional arrangement was adopted, which was to lead to independence in 1960. Under this Constitution, the Executive Council and the regional Houses of Assembly became increasingly run by Nigerians as the country drew nearer to independence. To a large extent, however, the administration was ultimately controlled by the Governor General, at the center, and the Governors in the regions.

On 1 October 1960 Nigeria became an independent state through an Act enacted by the British Parliament in 1960, entitled 'An Act to make provision for, and in connection with, the attainment by Nigeria of Fully Responsible Status within the Commonwealth.' The 1960 Constitution established in Nigeria a parliamentary government with a central government and three regional governments. The 1960 Constitution also contained a bill of rights, which was one of the measures designed to assuage the fears of the minorities in Nigeria of domination by the three major ethnic groups (Hausa/Fulani, Yoruba, and Igbo). The introduction of the bill of rights and other measures were part of the recommendations of the Willinck Commission of Inquiry into the fears of minorities in Nigeria. Under this Constitution the Judicial Committee of the Privy Council continued to be Nigeria's highest court.

In 1963, the Nigerian federal House of Representatives, relying on section 4 of the 1960 Constitution, amended the Constitution and declared Nigeria a republic. One of the consequences of this declaration was that the British monarch was no longer the head of government and Nigeria no longer regarded the Judicial Committee of the Privy Council as the highest court.

The first military coup in Nigeria was staged in 1966. This takeover was achieved by the suspension of the 1963 Constitution of the Federal Republic of Nigeria, as well as a subordination of the other parts of the Constitution to the decrees and edicts of the military government.[1] Military rule continued until 30 September 1979.

On 1 October 1979 Nigeria ushered in the Second Republic, which was anchored on the 1979 Constitution of the Federal Republic of Nigeria. In a bid to ensure popular participation in the making of the 1979 Constitution, the military government introduced an elaborate process of consultation and representation for its drafting. First, a Constitution Drafting Committee (CDC) was established to produce a draft of the constitution. The CDC consisted of two representatives of each of the states of the federation, a number of technocrats recommended by the military government, and representatives of civil society and other stakeholders. The draft constitution was then submitted to a Constituent Assembly, made up of 203 elected members, and twenty persons nominated by the military government. The Constituent Assembly received memoranda from the public and held public meetings and sittings designed to ensure popular participation. At the end of this process, the submitted draft was promulgated as the 1979 Constitution. The main features of the 1979 Constitution were a presidential system of government (which was a dramatic departure from the parliamentary system of government under the 1963 Constitution); a bicameral national assembly; a chapter of non-justiciable fundamental objectives and directive principles of state policy; a bill of rights; a federal system of government; a local government system; and independent national institutions.

In 1984, four years after the commencement of the Second Republic, the Nigerian military staged a coup and took power on 1 January 1984. Again, the operation of the 1979 Constitution was suspended.[2]

Another *coup d'etat* occurred in 1985.[3] In order to assuage the agitation for civilian rule, the leadership of the military government announced a return to civilian rule in 1989. To achieve this, a process of constitutional review began in 1986 with the establishment of a Political Bureau, which engaged in extensive deliberations and consultations with Nigerians on the nature of an appropriate constitution. On the submission of its report, a Constitution Review Committee was established to conceive a constitution in line with the Political Bureau's report. A

[1] See the Constitution (Suspension and Modification) Decree No 1 1966. See also *Lakanmi v Attorney General (Western State)*, 1971 1 UILR 201.
[2] See the Federal Military Government (Supremacy and Enforcement of Powers) Decree 1984.
[3] See the Constitution (Suspension and Modification) Decree No 17 of 1985.

Constituent Assembly, made up of elected and nominated members, reviewed a draft constitution, with public input. At the end of this process a 1989 draft constitution was presented to the federal military government.

The 1989 Constitution was operational until 1993 when, in the wake of events following the annulment of an election conducted on 12 June 1993 under its framework, it was suspended by the military and an Interim National Government (ING) was established.

In December 1993 another military coup took place, and the ING was sacked. Another process of constitutional review began, culminating in the 1995 draft constitution, which was never promulgated.

Following the death of General Sani Abacha in 1998, a change of guard brought General Abdusalami Abubakar to power, with a mandate to return the country to civilian rule. To achieve this objective a 15-member committee was established to produce a draft constitution. The draft constitution produced by that committee was promulgated by the federal military government as the 1999 Constitution.

By the time the Fourth Republic took off in 1999, the Nigerian military had been in power for twenty-eight of the thirty-nine years of Nigeria's post-colonial history. Such domination has been one of the defining features of Nigeria's constitutionalism. Military rule was unitary because the federal military governments were empowered to make laws for the peace, order, and good government of the country on any matter. The legacy of such a system is the concentration of power in the center in a way that threatens the federal system of government. Nigeria witnessed repression and human rights abuses during military rule and this has led to a culture of impunity.

II. Fundamental Principles of the Constitution

A. Constitutional goals and values

The preamble to the 1999 Constitution speaks to the people as providing a constitution for the 'purpose of promoting the good government and welfare of all persons on the principles of freedom, equality and justice'. Perhaps as a complement to this declaration, section 14 of the Constitution declares that the Nigerian State shall be based on *democracy and social justice*. We might then conclude that the foundational values of the Nigerian State are *freedom*, *equality*, *democracy*, *and social justice*. It would appear, however, that these constitutional values are only regarded as aids for constitutional interpretation in Nigeria.[4]

B. Constitutional principles

[4] See *Adesanya v President of Nigeria* (1981) 2 NCLR 358, 374.

1. Supremacy of the Constitution

Section 1(1) declares the Constitution as binding on all authorities and persons in Nigeria. In accordance with this provision, section 1(3) further states that any law that is inconsistent with the 1999 Constitution shall be void to the extent of the inconsistency. Given Nigeria's history of military change of government, the 1999 Constitution declares that Nigeria shall not be governed, nor shall any person take control of Nigeria's government or any part thereof, except in accordance with the Constitution.

2. Federalism

After years of a de facto unitary system of government during the different periods of military governance of the country, the 1999 Constitution, like the 1979 Constitution, adopts a federal system of government. Section 2(2) of the 1999 Constitution provides that Nigeria shall be a federation consisting of 36 states and a Federal Capital Territory. Nigeria's federation is made up of the federal government and the states. A local government system of democratically-elected local government councils operates within a framework of state legislation that provides for the establishment, structure, composition, finance, and function of such councils. This subordination of the local government system to the state governments represents a challenging feature of Nigeria's federalism.

3. Separation of powers

The 1999 Constitution endows the exercise of executive, legislative, and judicial powers on different organs. The legislative power of the Federal Republic of Nigeria is vested in the National Assembly, which is made up of a Senate and a House of Representatives. The legislative power of a state of the federation is vested in that state's House of Assembly. While the executive powers of the federation are vested in the President, the executive powers of a state lie with the Governor. The judicial powers of the federation are vested in the superior courts of record established under section 6 of the Constitution. It will become clearer in the course of discussion below that the endowment of powers on different bodies is not watertight, because these bodies exercise powers that would ordinarily have been thought to belong to other organs of government. This point has been recognized by Nigerian courts.

4. The rule of law

It is interesting to note that even though the rule of law is not mentioned anywhere in the 1999 Constitution, it can be said that Nigerian courts regard the rule of law as a cornerstone of the 1999 Constitution. The importance of the rule of law should be understood in the light of long periods of military rule in Nigeria during which the military ruled by force, and especially in the arbitrary manner in which power was exercised. Even under military governments, Nigerian courts in many instances held those governments accountable to the enabling legislation for acts

and omissions.[5] For example, legislation that permitted the indefinite detention of persons and ousted the jurisdiction of courts was strictly construed.[6] Even though the 1979 Constitution also did not mention the rule of law, Nigerian courts incorporated this principle in their constitutional interpretation to mean that there was a presumption against the ousting of the jurisdiction of courts;[7] that a Minister of the Federal Republic had to act fairly and not to the prejudice of a citizen;[8] and that notice of compulsory acquisition of land had to be given to a citizen.[9] This trend has continued under the 1999 Constitution.

5. The prohibition of a state religion

Section 10 of the 1999 Constitution prohibits the adoption, by the federal or a state government, of any religion as a state religion. It is often said that because of this provision, Nigeria is a secular state. This would be a wrong conclusion if it were to mean that religion does not play a role in public policy. Nigeria is a de facto religious state where Islam and Christianity are integrated into public policy—in the recognition of marriages, the observance of public holidays, and the resolution of conflicts. It is important to point out that the introduction of Islamic criminal law in twelve northern states of Nigeria in 1999 continues to divide the country between those who assert that its adoption is a contravention of section 10 and those who believe that the action is constitutionally sanctioned for a number of reasons, including the right to religion and the residual power to make criminal law legislation.

6. Respect for human rights

The 1999 Constitution contains a bill of rights which recognizes civil and political rights. An original jurisdiction is endowed on the High Court of a state to enforce the protection of these civil and political rights.

7. The fundamental objectives and directive principles of state policy

One of the interesting features of the 1999 Constitution is Chapter 2, which contains the fundamental objectives and directive principles of state policy, setting out the objectives and principles that should guide the exercise of public power. This is the thrust of section 13, which states that all organs of government and all authorities and persons exercising legislative, executive, and judicial powers are to conform to, observe, and apply the provisions of Chapter 2 of the Constitution. However, because section 6(6)(c) makes it clear that Chapter 2 is not justiciable, no suit can be brought to ensure compliance with the section. There is no legal

[5] See eg *Governor of Lagos State v Ojukwu* (1986) 1 NWLR (pt. 18) 630.
[6] See the following cases: *Agbaje v COP* (1969) NMLR 137; *Akaza v COP* (1964) 4 ECSLR 443, *Agbakoba v Director SSS* (1994) 6 NWLR (pt. 351) 475. See however *Wang Ching-Yao v Chief of Staff Supreme Headquarters* (1986) LHC.
[7] See *Military Governor of Ondo State v Adewunmi* (1988) 3 NWLR (pt. 82) 280; *Adeyemi v Attorney General Oyo State* (1984) 1 SCNLR 525.
[8] *Stitch v Attorney General of the Federation* (1986) 12 SC 373.
[9] *Attorney General of Bendel State v Aideyan* (1989) 9 SCNJ 80.

sanction if any organs of the state or federal government do not observe any objective or fundamental principle. It is in the realm of politics that Chapter 2 is a standard for judging the performance of governments. Herein lies the contradiction in the intent of the fundamental objectives and directive principles of the 1999 Constitution. In conclusion, Chapter 2 is programmatic and a guide for organs of government. This conclusion, long held to be orthodoxy, appears to be incorrect to a certain extent. The Nigerian Supreme Court made an exception to this statement when it held, in *Attorney General of Ondo State v Attorney General of the Federation*[10] and in *Olafisoye v Federal Republic of Nigeria*,[11] that section 15(4) of the 1999 Constitution (which mandates the state to abolish all corrupt practices and abuse of power) is justiciable when read with Item 60 of the Second Schedule of the 1999 Constitution (which empowers Nigeria's National Assembly to make laws with respect to the establishment and regulation of national authorities to promote and enforce observance of Chapter 2).

The fundamental objectives and directive principles can be summarized as follows:

The pursuit of national integration: The pursuit of national integration is the fundamental political objective of the Federal Republic of Nigeria, and is set out in section 15 of the Constitution. The state is to pursue national integration and prohibit discrimination on the grounds of place of origin, sex, religion, status, or ethnic or linguistic association or ties. National integration is to be pursued by (a) providing adequate facilities for and encouraging free mobility of people, goods, and services throughout the federation; (b) securing full residence rights for every citizen in all parts of the federation; (c) encouraging inter-marriage among persons from different places of origin, or of different religious, ethnic, or linguistic association or ties; and (d) promoting or encouraging the formation of associations that cut across ethnic, linguistic, religious, or other sectional barriers. In addition, the state is to foster a feeling of belonging and involvement among the various peoples of the federation, to the end that loyalty to the nation shall override sectional loyalties.

The pursuit of a mixed economy: A combination of section 16(1)(c) and (d) of the Constitution can plausibly be interpreted to mean that the pursuit of a mixed economy is a fundamental objective of economic governance in Nigeria. While the state is to manage and operate the major sectors of the economy, citizens are to operate or participate in all areas of the economy, including its major sectors. The objectives of the mixed economy are set out in section 16(1)(a) and (b). First, the resources of the nation are to be harnessed to promote national prosperity and an efficient, dynamic, and self-reliant economy. The second objective is the control of the national economy in such a manner as to secure the maximum welfare, freedom, and happiness of every citizen on the basis of social justice and equality of status and opportunity. Within these broad objectives, the Nigerian state is to direct its policy towards ensuring the promotion of a planned and balanced economic development, and that the material resources of the nation are

[10] (2002) 9 NWLR (pt. 772) 222.
[11] (2004) 4 NWLR (pt. 864) 580.

harnessed and distributed as well as possible to serve the common good. The state must also ensure that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of a few individuals or a group. In addition, suitable and adequate shelter, suitable and adequate food, a reasonable national minimum living wage, old age care and pensions, unemployment and sickness benefits, and welfare of the disabled are to be provided for all citizens.

The pursuit of social justice: The pursuit of social justice can be identified as the aim of a social order which is declared in section 17(1) of the Constitution to be based on freedom, equality, and justice. The objectives of social justice are set out in section 17(2): equality before the law; human dignity; humane governmental action; exploitation of resources for the common good; and independence, impartiality, integrity, and access to courts.

In order to ensure social justice, the directive requires the government to (a) provide the opportunity for securing an adequate means of livelihood, as well as adequate opportunity to secure suitable employment; (b) ensure that conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious, and cultural life; (c) ensure that the health, safety, and welfare of all persons in employment are safeguarded and not endangered or abused; (d) provide adequate medical and health facilities for all persons; (e) ensure that there is equal pay for equal work, without discrimination on account of sex or any other ground; (f) ensure that children, young persons, and the aged are protected against any exploitation, and moral and material neglect; and (g) render public assistance in deserving cases or other conditions of need.

Equal and adequate educational opportunities for all: The provision of equal and adequate educational opportunities at all levels and the eradication of illiteracy is another objective of governance in Nigeria, according to the tenor of section 18. In this regard, the different organs of government are directed to take measures, as and when practicable, to provide (a) free, compulsory, and universal primary education; (b) free secondary education; (c) free university education; and (d) free adult literacy programs.

III. Fundamental Rights Protection

A. Introduction to fundamental rights

In the course of the struggle for Nigeria's independence in 1960, the minority ethnic groups in the country[12] complained of marginalization by the majority groups. These complaints led to the setting up of the Willinck Commission, which recognized these fears and recommended, inter alia, the entrenchment of fundamental human rights in the Constitution as a means of their

[12] There are over 250 ethnic groups in Nigeria, of which four—Hausa, Yoruba, Igbo, and Ijaw—are considered the majority groups.

protection.[13] Nigeria's Independence Constitution of 1960 contained a bill of rights, in Chapter 3, as did the 1963 Constitution.

The 1979 Constitution incorporated a fundamental human rights provision in its Chapter 3. The 1999 Constitution has a similar bill of rights. Like the 1979 Constitution, the 1999 Constitution contains a number of fundamental objectives and directive principles of state policy. As noted above, Chapter 2 is declared to be non-justiciable. Even so, it has remained the juridical basis for demand for the enforcement of socio-economic rights in Nigeria.

B. The spectrum of rights

1. Civil and political rights

Chapter 4 of the 1999 Constitution protects only civil and political rights. The following rights are covered: the right to life (section 33); the right to the dignity of the human person (section 34); the right to personal liberty (section 35); the right to a fair hearing (section 36); the right to private and family life (section 37); the right to freedom of thought, conscience, and religion (section 38); the right to freedom of expression and the press (section 39); the right to peaceful assembly and association (section 40); the right to freedom of movement (section 41); the right to freedom from discrimination (section 42); the right to acquire and own immovable property in any part of Nigeria (section 43); and the rights arising from compulsory acquisition of property (section 44). Section 45 provides for restrictions and derogations from fundamental rights, while section 46 establishes the special jurisdiction of the High Courts to enforce fundamental human rights.

2. Socio-economic rights

What approximate socio-economic rights can be found in Chapter 2 of the 1999 Constitution. This chapter sets out the fundamental objectives and directive principles of state policy. As noted above, Chapter 2 is not justiciable, by virtue of section 6(6)(c).[14] The decision of the Federal High Court, Benin, in *Gbemre v Shell Petroleum Development Company*[15] is important because of the promise it presents regarding the enforcement of socio-economic rights through an integrated approach to human rights in Nigeria. The court held that a combined reading of sections 33 and 34 of the 1999 Constitution, guaranteeing the rights to life and to human dignity, included the right to a poison-free, pollution-free environment, as provided for in Article 24 of

[13] See Henry Willinck, *Report of the Commission Appointed to Enquire into the Fears of Minorities and Means of Allaying Them* (1958) 2.
[14] See *Okogie v Attorney General Lagos State* (1981) 2 NCLR 337.
[15] *Gbemre v Shell Petroleum Development Company of Nigeria and ors*, First Instance Decision, FHC/B/CS/53/05; ILDC 924 (NG 2005), 14 Nov. 2005.

the African Charter of Human and Peoples Rights ('African Charter'). In other words, the court crafted a right to environment based on the right to life and the right to human dignity. This appears to be significant, because section 20 of the Constitution can be approximated as a right to environment but is not justiciable because it is part of Chapter 2.

It is clear, therefore, that the possibility of protection of socio-economic rights exists through the African Charter. The African Charter is applicable in Nigeria because it has been domesticated as national legislation in accordance with section 12 of the Constitution. As stated above, the enforcement of socio-economic rights on the basis of the 1999 Constitution is not tenable. The recognition of the African Charter as a vehicle for the enforcement of socio-economic rights in Nigeria has been recognized by the Economic Community of West African States (ECOWAS) Court of Community Justice, which relies on the Charter to provide normative content for its human rights jurisdiction. In a recent judgment, the Court recognized the right to education in Nigeria as provided by the African Charter.[16] This is explored further below in Section III.F.

C. Application

Section 1(1) of the Constitution renders the Constitution supreme and makes it binding on all authorities and persons in Nigeria. It is clear that Chapter 4 of the 1999 Constitution, which protects fundamental human rights, is binding on the government and its organs. It would also appear settled that fundamental human rights, as protected by Chapter 4, apply to private individuals. What is not clear is the extent of such application. This type of uncertainty also arose under the 1979 Constitution. Soon after that constitution came into operation, some doubts arose as to whether the bill of rights applied to individuals.[17] Three Court of Appeal decisions—*Uzoukwu v Ezeonu II*,[18] *Peterside v I.M.B. (Nig.) Ltd*,[19] and *Onwo v Oko*[20]—removed these doubts. Examples of the application of fundamental human rights to individuals include the right to freedom of association, protected by section 37 of the 1979 Constitution and upheld in the case of *Anigboro v Sea Trucks Ltd*.[21] In *Aniekwe v Okereke*[22] and *Agbai v Okogbue*,[23] the right to property guaranteed by section 40 of the 1979 Constitution was recognized. In *Salubi v Nwariakwu*,[24] the Court of Appeal interpreted section 39(2) of the 1979 Constitution as abolishing the status of illegitimacy in Nigeria. There is therefore no doubt that the 1999 Constitution applies to individuals. However, the extent of the reach of fundamental human rights into private law remains controversial. For example, Nigerian courts have continued to

[16] See *Registered Trustees of the Socio-Economic Rights and Accountability Project v Federal Government of Nigeria & Anor*, Suit No ECW/CCJ/APP/0808.
[17] See *Madu v Onuaguluchi* (1985) 6 NCLR 365.
[18] (1991) 6 NWLR (pt. 200) 708.
[19] (1993) 2 NWLR (pt. 278) 712.
[20] (1996) 6 NWLR (pt. 456) 584.
[21] (1995) 6 NWLR (pt. 399)35.
[22] (1996) 6 NWLR (pt. 452) 61.
[23] (1991) 7 NWLR (pt. 204) 391.
[24] (1997) 5 NWLR (pt. 505) 442.

hold that the right to a fair hearing is not available to an employee in a private contract of employment.[25]

Given the widespread reliance on Islamic and customary laws in Nigeria, it is prudent to emphasize the supremacy of fundamental human rights over these two systems of personal law, which are indirectly recognized by the 1999 Constitution through the acknowledgement of customary and Islamic courts. Fundamental human rights act as a constitutional validity test for customary and Islamic laws. It is often the case that individually-oriented fundamental human rights clash with the collective ordering of customary and Islamic law.

D. Limitation and interpretation

1. Limitation

There are internal and external limitations of the rights protected by Chapter 4 of the 1999 Constitution. The external limitation provision is a general limitation clause, in section 45. From the tenor of that section, any law that is reasonably justifiable in a democratic society (a) in the interest of defense, public safety, public order, public morality, or public health, or (b) for the purpose of protecting the rights and freedom of other persons, can limit the application of the following rights: the right to private and family life (section 37); the right to freedom of thought, conscience, and religion (section 38); the right to freedom of expression and the press (section 39); the right to peaceful assembly and association (section 40); and the right to freedom of movement (section 41).

The meaning of 'defence, public safety, public order, public morality or public health' is not very clear from the jurisprudence of human rights enforcement in Nigeria. One reason for this is that Nigerian courts do not routinely ascertain the scope of an asserted right by considering its limitation as part of its interpretative duties. There are, however, a number of cases where the limitation clause has been in contention. In *Anzaku v Governor of Nassarawa State*,[26] the meaning of 'any law' was interpreted as meaning all laws, including customary law and Islamic law. The phrase 'public order' was interpreted by the Nigerian Supreme Court in *Osawe v Registrar of Trade Unions*.[27] In this case, the Court held that a similar phrase in the 1979 Constitution justified the refusal of the Registrar of Trade Unions to register a proposed trade union on the grounds of public order. The Registrar had argued that the discretion granted to his office was to reduce the proliferation of trade unions that had threatened the viability of trade unions. In *Medical and Dental Practitioners Disciplinary Committee v Okonkwo*,[28] 'public interest' was characterized as absent when the consequence of the application of a right is limited to an individual. This case involved the right of a Jehovah's Witness to object to a blood

[25] See eg *Nwaubani v Golden Guinea Breweries* (1995) 6 NWLR (pt. 400) 184.
[26] (2006) All FWLR (pt. 303) 308.
[27] (1985) 1 NWLR (pt. 4) 755.
[28] (2001) FWLR (pt. 44) 542.

transfusion. In *Chukwuma v COP*,[29] the Court of Appeal held that the Public Order Act and the Police Acts were examples of some of the laws envisaged by section 45 of the Constitution for the preservation of law and order, public safety, and public health. In a later case, *IGP v ANPP*,[30] the Court of Appeal ruled that the requirement of a police permit pursuant to the Public Order Act was not a justifiable limitation of the right to peaceful assembly and association.

There are also internal limitations. For example, section 45(2) provides for the limitation of the right to life (section 33) and the right to human dignity (section 35) during periods of emergency, to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency. The nature of this limitation is further defined by the proviso to section 45(2), which limits the derogation to death resulting from acts of war. Furthermore, the requirement in section 36(8) that a person can only be punished for an offence existing at the time of the offence is non-derogable. Other limitations can be found in section 34(1), which protects the right to dignity of the human person. Under this protection, nobody is required to perform forced or compulsory labor except in a number or circumstances, which include working in consequence of the sentence or order of a court (section 34(2)(a)).

2. Interpretation

In interpreting the bill of rights, two principles that have emerged are worth noting, and they can be summarized as follows. First, a distinction is made between principal and accessory claims. Nigerian courts have consistently held that a claim for breach of fundamental human rights must be the principal claim before the procedure for the enforcement of human rights can be available to a litigant.[31] If a human rights claim is an accessory claim and joined to another issue which is not a fundamental human rights claim, another procedure for the commencement of actions must be used. The significance of this distinction is that it is crucial and can be raised at the Supreme Court. Thus, a human rights claim can be dismissed by the Supreme Court on such a procedural point, even after many years of trial at the High Court and appeal at the Court of Appeal. Second, the possibility of public interest litigation in the enforcement of human rights is severely constrained in Nigeria because of the principle of standing to sue, which was developed in the case *Adesanya v President of Nigeria*.[32]

E. Enforcement

Section 46 of the Constitution, which forms the basis of the judicial enforcement mechanism, provides:

[29] (2008) 8 NWLR (pt. 927) 278.
[30] (2007) 18 NWLR (pt. 1066) 457.
[31] See *Tukur II v Government of Taraba State* (1997) 6 NWLR (pt. 510) 549.
[32] (1981) 2 NCLR 358.

> (1) Any person who alleges that any of the provisions of this chapter has been, is being or likely to be contravened in any State in relation to him may apply to High Court in that State for redress.
> (2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing such enforcement within that State of any right to which the Person who makes the application may be entitled under this chapter.
> (3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.
> (4) The National Assembly— (a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by the section; and (b) shall make provisions— (i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under the chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and (ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

The Fundamental Rights (Enforcement) Procedure Rules 2009 ('2009 Rules') were made pursuant to section 46(3) and were designated to commence on 1 December 2009. The 2009 Rules are the successor to the Fundamental Rights (Enforcement Procedure) Rules 1979, made pursuant to section 42(3) of the 1979 Constitution. That provision empowered the Chief Justice of Nigeria to make rules for the practice and procedure of a High Court towards the exercise of the original jurisdiction vested in the High Court to hear and determine any application for redress made to it by any person who alleged that any of the provisions of Chapter 3 had been, was being, or was likely to be contravened in any state.

F. The implementation of international human rights treaties

Nigeria is a party to regional and international human rights treaties. The regional treaties include the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa. The international treaties include the UN Convention on the Rights of the Child; the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the International Covenant on the Elimination of All Forms of Racial Discrimination; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the International Convention against Apartheid in Sports; the Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes Against Humanity; the Convention on the Rights of the Child; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Political Rights of Women; the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment; the Slavery Convention of 1926 (as amended); the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and

Practices Similar to Slavery; the Convention Relating to the Status of Refugees; and the Protocol Relating to the Status of Refugees.

Of all these treaties, it is only the African Charter on Human and Peoples' Rights that has received municipal expression in accordance with the requirement of section 12(1) of the 1999 Constitution, which provides that '[n]o treaty between the Federation and any other country shall have force of Law except to the extent to which any such treaty has been enacted into law by the National Assembly.' In 1983, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act was promulgated by the National Assembly, making the African Charter enforceable in Nigeria. It would appear that the constraints of having to domesticate a treaty have led to a situation where a treaty becomes a model for a piece of national legislation without an express acknowledgment that the intent of the legislation is the domestication of a treaty. A good example of this is the Child Rights Act 2003, which is modeled on the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

The extent of the application of the African Charter was one of the issues dealt with by the Supreme Court in *Abacha v Fawehinmi*.[33] The Supreme Court was unanimous in deciding that the Constitution is superior to the African Charter, but the African Charter is superior to municipal legislation. In many cases, Nigerian courts have struck down municipal legislation that has violated rights protected by the African Charter.[34]

The impact of the African Charter on the spectrum of rights generally, and socio-economic rights in particular, has become an issue due to a recent decision of the ECOWAS Community Court of Justice ('ECOWAS Court'). The ECOWAS Court is established by Articles 6 and 15 of the 1993 Revised ECOWAS Treaty. By a 2005 Supplementary Protocol, the jurisdiction of the Court was increased to cover cases alleging human rights violations in member states. This Protocol also expanded access to the Court because it permits individual access to the Court. To understand the impact of the jurisprudence of the ECOWAS Court on the protection of socio-economic rights, it is necessary to refer back to one consequence of the decision in *Abacha v Fawehinmi* that a domesticated treaty is not superior to the Constitution. As we have seen, Chapter 2 of the 1999 Constitution, which approximates in some respects a normative framework of socio-economic rights in Nigeria, is not justiciable. The controversy has been whether the provisions of the African Charter which protect a number of socio-economic rights are justiciable in Nigeria in the face of the provisions of Chapter 2. On the strength of *Abacha v Fawehinmi*, the answer is in the negative. However, recent decisions of the ECOWAS Court have created a dual track—one domestic and the other international—in the enforcement of human rights in Nigeria. The domestic track is the framework which we have just explored, in which an international treaty must be incorporated before it has effect, subject to the Constitution. Since the Constitution is

[33] *Abacha and ors v Fawehinmi*, Appeal to Supreme Court, SC 45/1997; ILDC 21 (NG 2000); (2000) 6 NWLR (pt. 660) 228, 28 April 2000.
[34] See eg *Ubani v Director of State Security Services* (1999) 11 NWLR (Pt. 625) 129; *Abiodun v Attorney General of the Federation* (2007) 15 NWLR (pt. 1057) 359.

superior to the domesticated treaty, its provisions determine the nature and extent of human rights. The second track is the international track and this is predicated on the consequences of becoming a state party to a treaty. If the treaty to which Nigeria is a party establishes institutional supervision—including judicial supervision—of its mandate, the judicial institution will concentrate on ensuring that the obligations undertaken under the treaty, and other international treaties as appear relevant, are fulfilled. Thus the ECOWAS Court has held, in *Registered Trustees of the Socio-Economic Rights and Accountability Project v Federal Government of Nigeria & Anor*,[35] that obligations undertaken by Nigeria as a result of it being a state party to the African Charter and the International Covenant on Economic Social and Cultural Rights enable the Court to recognize rights contained in these treaties even if they are socio-economic rights and therefore not justiciable in Nigeria by reason of section 6(6)(c) of the Constitution. The Court stressed that the right to education as recognized by Article 17 of the African Charter is independent of the right to education captured under the directive principles of state policy. The mandate of the ECOWAS Court is therefore anchored solely on the African Charter. Given this mandate, it is clear that problems of enforcement will remain for as long as the Nigerian legal system is relied upon to enforce the judgments of the ECOWAS Court and the African Charter is inferior to the 1999 Constitution.

If there are treaties which have been adopted by Nigeria but are not yet domesticated, the situation is different. Nigerian courts regard non-domesticated multilateral human treaties and the norms created thereby as having advisory status, even though the courts strive to ensure that the treaties are interpreted in such a way as to ensure compliance with treaty obligations.

G. Obstacles

There are many obstacles to the enforcement of human rights in Nigeria. These include the high cost of litigation, which in a relatively poor country effectively prevents people from accessing the courts to protect their human rights. Another obstacle is the principle of standing, which recognizes only those with personal standing as capable of bringing human rights actions. This limited standing principle denies public interest suits to protect the weak and vulnerable.

IV. Separation of Powers

A. Basic structure of the Nigerian government

The basic structure of the Nigerian government is a presidential system, with clear-cut powers endowed on three different organs of government. The executive powers are bestowed on the President of the federation and the Governor of the states of the federation; the legislative powers are vested in the National Assembly for the federation and the state Houses of Assembly; and the judicial powers are vested in federal and state courts. What becomes apparent from the analysis

[35] Suit No ECW/CCJ/APP/0808.

in this section is that the different organs of government sometimes exercise the powers of other organs.

B. **Executive powers**

Section 5(1) of the Constitution provides that the executive powers of the Federal Republic of Nigeria are vested in the President and Commander In Chief of the Armed Forces of Nigeria. He is to exercise these powers directly or through the Vice-President, Ministers of the Government of the federation, and members of the Public Service of the federation.

The executive powers of the President extend to the execution and maintenance of the Constitution, all laws made by the National Assembly, and all matters with respect to which the National Assembly has, for the time being, power to make laws. Presidential powers are generally defined by the Exclusive Legislative List, contained in the Second Schedule to the 1999 Constitution. This list contains 66 items on which the National Assembly is empowered to make laws.

Specific powers of the President include the powers to (i) determine the Ministries that will assist in the discharge of the executive powers and appoint suitable persons to fill the Ministries (section 147); (ii) appoint, subject to the confirmation of the Senate, the members of a number of Commissions and Councils, such as the Code of Conduct Bureau, the Council of State, the Federal Character Commission, the Federal Civil Service Commission, the Federal Judicial Service Commission, the Independent National Electoral Commission, the National Defence Council, the National Economic Council, the National Judicial Council, the National Population Commission, the National Security Council, the Nigeria Police Council, the Police Service Commission, and the Revenue Mobilisation Allocation and Fiscal Commission; (iii) initiate a budget and lay it before the National Assembly (section 81); (iv) exercise the prerogative of mercy, including granting a free or conditional pardon (section175); (v) issue a proclamation declaring a state of emergency in the country (section 305); (vi) enter into treaties on behalf of the Federal Republic of Nigeria; (vii) make regulations with respect to Chapter 3 of the Constitution, which provides for the meaning, acquisition, and loss of citizenship; (viii) accept and declare the population census on the advice of the Council of State (section 213); and (ix) determine the operational use of the Armed Forces of the federation, including the appointment and removal of the heads of the Armed Forces (section 218). These powers show clearly that in certain circumstances, the President exercises legislative and judicial powers.

The Constitution imposes an obligation on the President to form a Federal Executive Council to facilitate the discharge of the executive functions (section 148). While the President has the discretion to determine the number of Ministers to assist him, there is an obligation to hold regular meetings with the Ministers and the Vice-President. The functions of the Federal Executive Council include determining the general direction of domestic and foreign policies of

the government; coordinating the activities of the President, the Vice-President, and the Ministers in the discharge of their executive responsibilities; and advising the President generally in the discharge of his executive functions, other than those functions with respect to which he is required by the Constitution to seek the advice or act on the recommendation of any other person or body.[36]

Section 315 of the Constitution permits the President to exercise some legislative powers, by empowering him to make modifications to laws made by successors to the National Assembly in order to bring them in conformity with the 1999 Constitution.[37]

Section 208 of the Constitution grants immunity from legal proceedings in favor of the President, the Vice-President, the Governor, and the Deputy Governor, to enable them to perform their functions effectively. The immunity granted to these officers ensures that no civil or criminal proceedings may be instituted or continued against them. They may not be arrested or imprisoned during their office, and no process of any court requiring or compelling their appearance may be applied for or issued. This immunity has been described as an absolute immunity,[38] but immunity does not apply to civil proceedings against them in their official capacity or to civil or criminal proceedings in which they are only a nominal party. The Supreme Court has held that the officers affected can maintain an action against third parties, but are immune from suit.[39] There is no immunity in favor of other members of the executive. While there was such immunity prior to the 1979 Constitution, the settled view is that the 1979 and 1999 Constitutions did and do not recognize any immunity for other members of the executive. Thus, the Nigerian State will be liable for acts committed by its officers and agents in their official capacity.[40]

Eligibility for the office of the President is set out in section 131 of the Constitution. A person shall be qualified for the office of the President if he (a) is a citizen of Nigeria by birth; (b) has attained the age of forty years; (c) is a member of a political party and is sponsored by that political party; and (d) has been educated up to at least School Certificate level or its equivalent. The same requirements apply for eligibility for the office of Governor of a state (section 177).

The President can be impeached according to the procedure set out in section 143 of the Constitution; section 188 contains a similar procedure for the impeachment of a Governor of a state. The impeachment procedure commences with a petition, signed by not less than one-third of the National Assembly, stating that the President or Governor is guilty of gross misconduct in

[36] See section 148(2) of the 1999 Constitution.
[37] See *Attorney General of Abia State v Attorney General of the Federation* (2003) FWLR (pt. 152) 131.
[38] See *Tinubu v IMB Securities Plc* (2001) 16 NWLR (pt. 740) 670.
[39]See *Global Excellence Comm. Ltd v Duke* (2007) 16 NWLR (pt. 1059) 22; *ICS Nig Ltd v Balton* (2003) 8 NWLR (pt. 822) 223.
[40] See *Ransome Kuti v Attorney General of the Federation* (1985) 2 NWLR (pt. 6) 211; *Government of Imo State v Greco Construction and Engineering Company Ltd* (1985) 3 NWLR (pt. 11) 71.

the performance of the functions of his office, detailed particulars of which must be provided. The elaborate procedure for the impeachment of the President or a Governor is significant because it ousts the jurisdiction of the court with respect to any matter concerned with the impeachment. Since 1999, some Governors in Nigeria have been impeached by state Houses of Assembly which have urged the courts to hold that they have no jurisdiction to entertain any question concerning the impeachment by the tenor of section 188(10) of the 1999 Constitution. In a number of such cases[41] Nigerian courts have held that they have the jurisdiction to ascertain whether there was strict compliance with the procedure set out in section 188.

The President can also be removed by reason of permanent incapacity if there is a resolution passed by a two-thirds majority of all the members of the Federal Executive Council declaring that the President is incapable of discharging the functions of his office (section 144). This procedure was, however, not used to remove the late President Yar'Adua, who was ill and hospitalized overseas for over eight months.

C. Legislative power

Section 4(1) of the Constitution provides that the legislative power of the Federal Republic of Nigeria is vested in the National Assembly, which is comprised of the Senate and House of Representatives. The legislative power of the states of the federation is vested in the House of Assembly of a state.

The Senate of the National Assembly is organized on the principle of equality of states. Thus, all the states of the federation have three Senators. The House of Representatives is organized, however, on the basis on population. Thus, section 49 of the Constitution provides that the 360 constituencies shall have nearly equal populations as far as possible. The State Houses of Assembly are also organized on the basis of population. They consist of three or four times the number of seats which the state holds in the House of Representatives on the basis of nearly equal population, provided that the minimum number of seats shall not be more than 40 and not less than 24 (section 91).[42] While the Independent National Electoral Commission is required to review state constituencies every ten years (section 114(1)), presumably on the basis of population, there is no provision for the review of the National Assembly constituencies on any ground.

The National Assembly is required to make laws for Nigeria in certain areas. First, it has exclusive competence over matters in the Exclusive Legislative List, which is contained in Part 1 of the Second Schedule to the Constitution. These include issues such as aviation; citizenship; diplomatic, consular, and trade representation; exchange control; and extradition. Second, the National Assembly also has concurrent powers with the State Houses of Assembly to make laws

[41] See eg *Inakoju v Adeleke* (2007) All FWLR (pt. 353) 3.
[42] See *Oju LG v INEC* (2007) 14 NWLR (pt. 1054) 242.

with respect to any matter in the Concurrent Legislative List, set out in the first column of Part II of the Second Schedule to the Constitution. In this part of the Schedule the Constitution sets out the extent of federal and state powers in a way that seeks to demarcate the extent of the concurrent powers of the National Assembly and the State Houses of Assembly. In addition, other provisions of the Constitution grant express powers to the National Assembly to make laws. For example, section 11(4) endows it with powers to make laws for the peace, order, and good government of a state if the State House of Assembly is unable to make laws pursuant to the powers vested in that body. This situation must continue until the National Assembly is of the opinion that the State House of Assembly can resume its law-making functions.

If, however, in the exercise of concurrent powers the National Assembly and a State House of Assembly make laws with respect to the same concurrent matter, section 4(5) provides that the law validly made by the National Assembly shall prevail over that made by the State House of Assembly. It would appear that the key question, then, is whether either of the legislative bodies 'validly' made the legislation, which involves an evaluation of the nature and extent of the concurrent power.

A State House of Assembly is empowered to make laws with respect to matters which are neither listed in the Exclusive Legislative List nor reserved for the National Assembly in the Concurrent Legislative List,[43] and on any other matter with which it is specifically empowered under the Constitution. For example, section 7 of the Constitution enables the State Houses of Assembly to enact a law which provides for the establishment, structure, composition, finance, and functions of democratically elected local government councils.

The National Assembly exercises its powers through bills passed by both the Senate and the House of Representatives and assented to by the President, except in cases where the President's refusal is vetoed by the passing of the bill by a two-thirds majority of each of the National Assembly's Houses (section 58). Where, however, a money bill is involved, the procedure changes and a time limit is set within which the National Assembly is to act. Section 59(2) of the 1999 Constitution provides that where a money bill is passed by one House of the National Assembly but is not passed by the other House within a period of two months from the commencement of the financial year, the President of the Senate must, within fourteen days, convene a meeting of the Joint Finance Committee with a view to resolving the differences between the two Houses concerning the bill. If the Joint Finance Committee fails to resolve the differences, the National Assembly must sit at a joint sitting and if the bill is passed, it must be presented to the President for assent.[44] The mode of exercising the powers of State Houses of Assembly is similar to the procedure in the National Assembly.

[43] See *Fawehinmi v Babangida* (2003) FWLR (pt. 146) 835.
[44] See *Attorney General Bendel State v Attorney General of the Federation* (1981) 10 SC 1.

In order to efficiently exercise their law-making powers, the National and State Houses of Assembly are given a number of facilitative powers. These include the power to work through committees (section 62). They can also conduct investigations into 'any matter or thing with respect to which it has power to make laws', and/or 'conduct investigations into the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for (i) executing or administering laws enacted by' that House of Assembly; and '(ii) disbursing or administering moneys appropriated or to be appropriated' by that House of Assembly (sections 88(1) and 128(1)). The powers conferred on the National and State Assemblies are exercisable only for the purpose of enabling the Assembly to (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and (b) expose corruption, inefficiency, or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it (sections 88(2) and 128(2)). For the purposes of exercising their powers to conduct investigations, sections 89 and 129 of the Constitution enable the National and State Assemblies to procure all such evidence, written or oral, direct or circumstantial, as they may think necessary or desirable, and examine all persons as witnesses whose evidence may be material or relevant to the subject matter; require such evidence to be given on oath; summon any person in Nigeria to give evidence at any place, or produce any document or other thing in his possession or under his control; and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions. The National and State Assemblies can issue a warrant to compel the attendance of any person. If a person fails, refuses, or neglects to attend and does not excuse such failure, refusal, or neglect to the satisfaction of the House or the committee in question, that person may be ordered to pay all costs arising from compelling their attendance or their failure, refusal, or neglect to obey the summons, and a fine may also be imposed, which is recoverable in the same manner as a fine imposed by a court of law.

Nigerian courts have interpreted the exercise of the power of investigation by the National and State Houses of Assembly strictly. For example, in *Momoh v Senate*[45] and in *Adiukwu v National Assembly*[46] the rights to freedom of expression of the press and journalists were upheld. These decisions appear to be consistent with the desire of the National Assembly to ensure protection of the fundamental human rights of Nigerians.

The Constitution endows the National and State Houses of Assembly with the power to regulate their procedure. Interpreting similar provisions in the 1979 Constitution, the Court of Appeal in *Ume-Ezeoke v Makarfi*[47] held that the courts have no jurisdiction over the internal procedure of the National Assembly. It must be noted, however, that this internal procedure must not be in

[45] (1981) 2 NCLR 105.
[46] (1982) 3 NCLR 399.
[47] (1982) 3 NCLR 663.

breach of the Constitution. In *Akinwolemiwa v Ondo State House of Assembly*,[48] the Court of Appeal ruled that where the provisions of the Constitution are violated and the fundamental human rights of a complainant are involved, the courts will intervene to ensure constitutional compliance. This possibility is fortified by section 4(8) of the Constitution, which provides that the exercise of legislative powers by the National Assembly or by a House of Assembly must be subject to the jurisdiction of the courts of law and judicial tribunals established by law. Thus, the National Assembly or a House of Assembly may not enact any law that ousts, or purports to oust, the jurisdiction of such a court or judicial tribunal. The Supreme Court noted in *Attorney General Bendel State v Attorney General of the Federation*[49] that section 4(8) is one of the many checks and balances contained in the Constitution, and that 'it is unique among written constitutions.' It would appear that this represents the law under the 1999 Constitution: the courts have intervened to ensure compliance with the powers of impeachment granted to State Houses of Assembly.[50]

V. Federalism/Decentralisation

Nigeria is a federation. There are only federal and state governments in Nigeria. The fact that Nigeria has more than 250 ethnic groups and is religiously diverse makes federalism an attractive concept of governance: as far as possible, different groups are able to govern themselves in the states of the federation, while leaving issues of common concern to the federal government.

The Exclusive Legislative List contains 66 items which appear to be of common concern to the federation. State governments are not allowed to legislate on matters on the Exclusive Legislative List.[51] Some of the powers granted to the federal government are drafted with internal limitations which serve to further define and specify the extent of the powers of the federal government. These internal limitations also serve to define the nature of the powers left for states. For example, Item 29 sets out power over '[f]ishing and fisheries other than fishing and fisheries in rivers, lakes and waterways'. Accordingly, states have control over fishing and fisheries in rivers, lakes, and waterways.

One criticism of the Nigerian federation is that the federal government is dominant and overbearing towards the states because of the nature of the matters over which it has exclusive control. In this regard, it is important to bear in mind that the Exclusive Legislative List in the 1979 Constitution appeared to capture the powers of the federal military government, which ran the country on a unitary basis. Since the Exclusive Legislative Lists in the 1979 and 1999 Constitutions are similar, it is therefore argued in some quarters that the number and type of matters included therein make the federal government more powerful than the states of the federation. Some of these matters, such as the power to regulate police and other security

[48] (1985) 6 NCLR 580.
[49] (1982) 3 NCLR 1.
[50] See *Inakoju v Adeleke* (2007) All FWLR (pt. 353) 2.
[51] See *Oil Palm Company Limited v Attorney General Bendel State* (1985) 6 NCLR 344.

agencies established by law, the control of capital issues, the power over commercial and industrial monopolies and trusts, and drugs and poison should be on the Concurrent Legislative List, with a clear indication of the extent of the power of state governments.

The concern over the dominance of the federal government over the states is exacerbated by the nature of fiscal federalism which is operated in Nigeria. A Federation Account is mandated by section 162(1) of the Constitution, into which is to be paid all revenues collected by the federal government. The Federation Account is important because Nigeria depends significantly on proceeds from the sale of crude oil, which are paid into this account. Monies in the Federation Account are to be distributed only to the federal and state governments, including local government councils.[52] Each state is required to maintain a State Joint Local Government Account, into which all allocations to local government councils are to be paid in accordance with the formula agreed in line with the provisions of section 162(2).

The framework for the current formula for the sharing of the revenue accruing to the Consolidated Revenue Fund is set out in section 162(2), which provides that:

> The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density; Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

The current formula for vertical revenue allocation is 56% for the federal government, 24% for the states, and 20% for the local governments.[53] It should be noted that of all the horizontal principles to be considered in arriving at a revenue formula, the principle of derivation must be used and the proportion to be accorded through derivation must not be less than 13%. The special position for derivation is a response to a long-standing (militant) agitation by the oil-producing states of the Niger Delta to significantly increase the share of derivation as a factor in revenue allocation. In a recent action, the Supreme Court ruled that oil occurring in the external waters of littoral states in the Niger Delta should not be taken into account in determining the amount accruable to these states on the basis of derivation.[54]

The Concurrent Legislative List contains matters over which state governments can make laws, such as antiquities and monuments; archives; collection of taxes; electoral law; electric power; exhibition of cinematographic films; industrial, commercial, or agricultural development; scientific and technological research; statistics; trigonometrical, cadastral, and topographical

[52] See *Attorney General of Abia State v Attorney General of the Federation* (2002) FWLR (pt. 102) 1.
[53] See Allocation of Revenue (Federation Account Etc) (Modification) Order 2002.
[54] See *Attorney General of the Federation v Attorney General of Abia State* (2002) 16 WRN 1.

surveys; and university, technological, and post-primary education. A look at the 36 states of the federation reveals to a large extent that the states are organized on an ethnic and religious basis. It would therefore appear reasonable to conclude that the states are designed to enable different ethnic and religious groups to organize themselves in matters peculiar to them. The Concurrent Legislative List contains matters that enable different ethnic and religious groups to determine how best to manage their affairs in accordance with the Constitution. The nature of a concurrent list inevitably leads to controversy over the extent of the powers of the federal and state governments over matters listed therein. This controversy is further stoked by the provisions of section 4(5), which provides that a law enacted by the National Assembly shall take precedence over a law made by a State House of Assembly over the same subject matter. A facial reading of this provision would seem to indicate that even the National Assembly can make laws over matters that are neither in the Exclusive Legislative List nor in the Concurrent Legislative List, and therefore fall under the residual list. This interpretation appears doubtful, as it negates the structure of powers in the 1999 Constitution. When federal and state legislation exist and cover the same field, it is the Constitution that should guide a determination as to whether the federal legislation is enabled by the provisions of the Constitution. If the legislation concerns an area that is not within the competence of the federal government, it cannot be right that the legislation enacted by the National Assembly supersedes legislation made by a State House of Assembly.

A democratically elected[55] local government system, as provided for in section 7, is not a distinct and third tier of government separate from the state and federal governments. The local government councils are part of the state government even though they are constitutionally endowed with certain powers. That they are an agency of the state government is obvious from section 7(1) of the Constitution, which states that the government of every state shall ensure their existence under a law which provides for their establishment, structure, composition, finance, and functions. Furthermore, section 162(5) provides that the amount standing to the credit of local government councils in the Federation Account shall also be allocated to the state for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly. Thus, the local governments would appear to be entirely within the exclusive competence of the state governments. This view was confirmed by the Supreme Court in *Attorney General of Abia State v Attorney General of the Federation*.[56] In *Attorney General Lagos State v Attorney General Federation*,[57] the Supreme Court held that a combined reading of section 3(1), (2), and (3), Part 1 of the First Schedule, and section 8(3), (5), and (6) means that even though a state government can create a local government area, the process is incomplete unless it submits such an exercise to the National Assembly, which shall then proceed to amend section 3(6) and Part I of the First Schedule. The functions of a local government council are set out in the Fourth Schedule to the Constitution. They include the

[55] See *Akpan v Umah* (2002) 7 NWLR (pt. 767) 701; *Attorney General Plateau State v Goyol* (2007) 16 NWLR (pt. 1016) 57.
[56] (2002) 6 NWLR (pt. 763) 264.
[57] (2004) 18 NWLR (pt. 904) 1.

consideration and the making of recommendations to a state commission on economic planning or any similar body on the economic development of the state, particularly in so far as the areas of authority of the council and the state are affected, and the proposals made by that commission or body. A local government council is also to engage in the collection of rates, radio and television licenses; the establishment and maintenance of cemeteries, burial grounds, and homes for the destitute or infirm; the licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows, and carts; the establishment, maintenance, and regulation of slaughter houses, slaughter slabs, markets, motor parks, and public conveniences; the construction and maintenance of roads, streets, street lightings, drains, and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by a State House of Assembly; the naming of roads and streets and numbering of houses; the provision and maintenance of public conveniences, sewage, and refuse disposal; the registration of all births, deaths, and marriages; the assessment of privately-owned houses or tenements for the purpose of levying rates as prescribed by a State House of Assembly; and the control and regulation of out-door advertising and hoarding, movement and keeping of pets, shops and kiosks, restaurants, bakeries, and other places for sale of food to the public, laundries, and licensing, and the regulation and control of the sale of liquor.

A close examination of the functions of a local government council reveals that there are certain functions that would seem to indicate that it is a tier of government. A good example of this point is the power to impose rates and taxes and the fact that the Nigerian Supreme Court has held that a local government council has the exclusive right to impose rates.[58]

The Fourth Schedule of the Constitution also recognizes the importance of local governments in the administration of their state and provides that their functions include their participation in the state's government with regard to the provision and maintenance of primary, adult, and vocational education; the development of agriculture and natural resources, other than the exploitation of materials; the provision and maintenance of health services; and such other functions as may be conferred on a local government council by a State House of Assembly.

The organization of Nigeria's legislative powers on the basis of the Exclusive and Concurrent Legislative Lists is a means to ensure a realization of one of the fundamental features of federalism, which is that each level of government in Nigeria is separate and autonomous within the constitutional division of powers. In a number of cases, the Supreme Court has been approached on various contentious issues dealing with the nature and extent of federal and state power. First, in *Attorney General Lagos State v Attorney General Federation*,[59] the Supreme Court held that it was unconstitutional and contrary to section 162(5) of the Constitution for the federal government to withhold the revenue due to the Lagos State Government on the grounds that the creation of additional local government councils in that state was not in accordance with

[58] See *Knight Frank & Rutley v Attorney General of Kano State* (1998) 7 NWLR (pt. 556) 1.
[59] (2003) 12 NWLR (pt. 833) 1.

the Constitution. Second, in *Attorney General of Ogun State v Attorney General of the Federation*,[60] the Supreme Court held that the federal government cannot by its law confer functions or impose duties on state government functionaries. Third, in *Attorney General of Ondo State v Attorney General of the Federation & Others*,[61] a state government challenged the constitutionality of the Corrupt Practices and Related Offences Act 2000 enacted by the federal government, which created the offences of corruption and fraud as well as related offences, and made the offences applicable to the public services of the federal, state, and local governments. The Act established the Independent Corrupt Practices Commission with power, along with the Federal Director of Public Prosecutions, to investigate and prosecute the offences under the Act as well as all offences under any written law in Nigeria. The Ondo State Government argued that the Act was contrary to the division of powers under the 1999 Constitution, because the federal government does not have the power to make laws with respect to offences under state law. The Supreme Court held that even though the Corrupt Practices and Related Offences Act 2000 constituted a serious interference with the autonomy of state governments, the Constitution authorises this interference by a combined reading of section 15(5) and Item 60 of the Exclusive Legislative List. The Court stated that the power to legislate to prohibit corrupt practices is concurrent and can be exercised by federal and state governments, and being a concurrent power, any law made by the federal government on the matter has overriding effect. Two years later, in *Olafisoye v Federal Republic of Nigeria*,[62] a similar challenge to the constitutionality of the Economic and Financial Crimes Commission (Establishment) Act 2002 was unsuccessful. Fourth, through the Monitoring of Revenue Allocation to Local Governments Act 2005, the National Assembly tried to monitor the manner in which local governments spent their statutory allocation pursuant to the concurrent powers granted to the National Assembly by section 162(5) of the Constitution, which provides that revenue standing to the benefit of local governments shall be allocated to states for the benefit of local government councils on 'such terms' as may be prescribed by the National Assembly. The 2005 Act, allegedly in furtherance of 'such terms', established institutions and processes by which the federal and state governments were to jointly monitor the payment and utilization of funds appropriated to local governments and report to the National Assembly. Specifically, the Act enjoined state governments to establish a State Joint Local Government Account Allocation Committee. In *Attorney General of Abia State v Attorney General of the Federation*,[63] a number of state governments challenged the constitutionality of the Act, arguing that by the provisions of section 162(6) of the Constitution, a state has the exclusive power to establish a State Joint Local Government Account into which shall be paid all monies due to local government councils. The Supreme Court upheld their contention, and held that the 2005 Act was unconstitutional as encroaching on the autonomy of state governments and was contrary to the federal system of government in Nigeria. It should be recalled that in

[60] (1982) 3 NCLR 583.
[61] (2002) 9 NWLR (pt. 772) 222.
[62] (2004) 4 NWLR (pt. 864) 580.
[63] (2008) All FWLR (pt. 338) 604.

Attorney General of Ogun State v Attorney General of the Federation[64] it was declared that the Allocation of Revenue (Federation Account etc) Act 1990, which established a state Joint Local Government Allocation Committee, was contrary to the 1979 Constitution.

The fact that the different levels of government are autonomous in their sphere of operation does not rule out the need for cooperation in the governance of the country. This point is recognised in a number of constitutional institutions where federal and state governments deliberate and make policy. A good example is the Council of State, established by section 153 of the Constitution. Part 1(B) of the Third Schedule to the Constitution lists the membership of the Council of State to include the President and all Governors of the states. The powers of the Council of State include advising the President in the exercise of his powers with respect to census; the prerogative of mercy; the award of national honours; and the maintenance of public order within the federation. A similar body is the National Economic Council, which comprises the Vice-President as Chairman and all the Governors of the states. The National Economic Council is charged, by Part 1(H) of the Third Schedule, with advising the President on the economic affairs of the federation and on particular measures necessary for the coordination of the economic planning efforts or economic programs of the various governments of the federation.

VI. Constitutional Adjudication

A. Constitutional Review

The Constitution establishes federal and state superior courts of record, in which the exercise of judicial power is vested by the provisions of section 6(1), (2), and (3). The federal courts established in this manner include the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, and the National Industrial Court. The state courts of record are the High Court, the Sharia Court of Appeal, and the Customary Court of Appeal. The Sharia and Customary Courts of Appeal are optional for states of the federation, and are relevant where any state has Islamic or customary courts, as the case may be, in existence.

To understand the organization of Nigerian courts, it is important to begin with the state courts of record. In many states there are a number of inferior courts of record, such as Magistrates Courts, Customary Courts, and Area Courts. The superior court of record in each state is the High Court. It has original jurisdiction which extends to hearing and determining any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation, or claim is in issue, and hearing and determining any criminal proceedings involving or relating to any penalty, forfeiture, punishment, or other liability in respect of an offence committed by any person (section 272).

[64] (2002) 18 NWLR (pt. 798) 232.

This jurisdiction enables the High Court to engage in constitutional review. There is also a superior court of record known as the Federal High Court, whose jurisdiction extends to matters over which the federal government can make law, as enumerated in section 251 of the Constitution. Thus, questions of constitutional review of matters over which the federal government has jurisdiction must be commenced before the Federal High Court.[65] However, the original jurisdiction of any constitutional matter relating to or connected with labor, employment, trade unions, industrial relations, and matters arising from workplace conditions of service is reserved for the National Industrial Court by section 254C of the Constitution.

The Sharia and Customary Courts of Appeal are superior courts of record of the same standing as the High Court of a state. The Sharia Court of Appeal, as set out in section 277 of the Constitution, has appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic personal law. The jurisdiction of the Sharia Court of Appeal enables it to hear appeals from Area Courts where Islamic law is applied. Customary Courts of Appeal have appellate and supervisory jurisdiction in civil proceedings involving questions of customary law, as provided for in section 282(1) of the Constitution. Appeals from Customary Courts are heard by the Customary Courts of Appeal.

The Court of Appeal is a federal court with original and appellate jurisdiction. The original jurisdiction of the Court of Appeal, in terms of section 239(1) of the Constitution, is to hear petitions with respect to the office of the President or Vice-President. Under section 240, the appellate jurisdiction of the Court of Appeal is to hear appeals from the Federal High Court; the High Court of the Federation Capital Territory, Abuja; the High Court of a state; the Sharia Court of Appeal of the Federal Capital Territory, Abuja; the Sharia Court of Appeal of a state; the Customary Court of Appeal of a state; and from such decisions of a court martial or other tribunals as may be prescribed by an Act of the National Assembly. Appeals to the Court of Appeal are as of right with respect to decisions where the interpretation and application of the Constitution are in question.

Appeals from the Court of Appeal go to the Supreme Court as of right when the question involves the interpretation and application of the Constitution.[66] The original jurisdiction of the Supreme Court is in respect of any dispute between the federation and the states, or between the states themselves, insofar as that dispute concerns any question on which the existence and extent of a legal rights depends.[67]

It is thus clear that constitutional review must commence in the High Court, except in cases between the federal government and any state(s) or between the states, which must commence at

[65] See eg *Nigerian Postal Service v Adepoju* (2003) FWLR (pt. 147) 1064; *NNPC v Ekwor* (1998) 12 NWLR (pt. 577) 219.
[66] See section 233(1) & (2) of the 1999 Constitution.
[67] See *Attorney General Kano State v Attorney General of the Federation* (2007) 6 NWLR (pt. 1029) 164.

the Supreme Court. There is, however, a procedure described in the Constitution as 'reference of questions of law', by which issues of constitutional review may end up in higher courts even though they were filed at a lower court. Section 295 of the Constitution states that where a substantial question of law involving the interpretation of the Constitution arises in a proceeding at an inferior court of record, that court may refer the matter to the High Court, which may in turn refer the matter to the Court of Appeal for a decision.[68] The same possibility exists in a matter filed before the High Court, which can refer the matter to the Court of Appeal. If such a substantial question of constitutional interpretation is identified by the Court of Appeal, that court can also refer the matter to the Supreme Court. Such references can be made by the courts *suo motu* or in response to the application of the parties to the case.[69]

B. Independence of the judiciary

To evaluate the independence of the judiciary, it is important to consider the manner of their appointment and dismissal, their remuneration, security of tenure, funding, and other issues.

The power to appoint judicial officers of federal and state superior courts of record is centralized, because it is vested in the National Judicial Council (NJC). The NJC is made up of the Chief Justice of Nigeria; the next most senior member of the Supreme Court; the President of the Court of Appeal; five retired justices of either the Supreme Court or the Court of Appeal; five Chief Judges of states; one Grand Kadi;[70] one President of the Customary Court of Appeal; five members of the Nigerian Bar Association; and two persons, who are not legal practitioners, of unquestionable integrity. The powers of the NJC are to recommend to the President appropriate persons for appointment to, or dismissal from, federal courts; to recommend to the Governors of states appropriate persons for appointment to, or dismissal from, state courts; and to collect, control, and disburse all moneys for the judiciary.

The appointments of Justices of the Supreme Court, the President of the Court of Appeal, and the Chief Judge of the Federal High Court are undertaken by the President, on the recommendation of the NJC, subject to confirmation by the Senate of the National Assembly. All other Justices of the Court of Appeal and judges of the Federal High Court can be appointed by the President on the recommendation of the NJC. The appointment of the Chief Judge of a state High Court, the President of the Customary Court of Appeal, and the Grand Kadi of the Sharia Court of Appeal is undertaken by the Governor of a state acting on a recommendation of the NJC, but is subject to confirmation by the State House of Assembly. All other judges of state High Courts, the Customary Court of Appeal, and the Sharia Court of Appeal are appointed by the Governor of a state on the recommendation of the NJC. In certain quarters the existence of such a centralized

[68] See *Governor of Ogun State v President of Nigeria* (1981) NCLR 672; *Akpojaro v Governor Bendel State* (1983) 4 NCLR 533.
[69] See *Federal Republic of Nigeria v Ifegwu* (2003) FWLR (pt. 167) 703.
[70] The Grand Kadi is the presiding head of the Sharia Court of Appeal of a state.

body has been questioned as being contrary to the basic tenets of federalism, since the autonomy of state courts appears to have been greatly eroded by the functions of the NJC.

The tenure of judicial officers seems to be reasonably secure. Justices of the Supreme Court can hold office until they are seventy, while judicial officers of the superior courts of record can hold office until they are sixty-five. Judicial officers who retire after having worked for not less than fifteen years are entitled to earn their last salary for life. A pro rata rate applies if the judicial officer has served for less than fifteen years.

The security of judicial officers' tenure is enhanced by the difficult procedure for their removal. The Chief Justice of the federation, the President of the Court of Appeal, and the Chief Judge of the Federal High Court can only be removed by an address supported by a two-thirds majority of the Senate. The same applies to the Chief Judge of a state, the President of the Customary Court of Appeal, and the Grand Kadi, who can only be removed by the Governor of a state acting on an address supported by a two-thirds majority of the State House of Assembly. Other Justices and judges of superior courts of record may be removed by the President and the Governor, as appropriate, on a recommendation of the NJC. The grounds for removal include infirmity of body and mind, misconduct, or contravention of the Code of Conduct.[71]

To a large extent, it may be argued that the Nigerian judiciary is reasonably independent when the manner of appointment, dismissal, and tenure of judicial officers is considered. Furthermore, their autonomous funding is secured by the provision of section 162(9) of the Constitution, which instructs that payment of monies that are due to the judiciary in the Federation Account be paid to the NJC, for disbursement to the federal and state courts. This enhances the ability of the judiciary, as an arm of government, to be independent. Except to the extent that the judiciary defends its proposed appropriation before the legislature, it is free to disburse the appropriate sums of money once the budget is passed.

C. Principles of constitutional interpretation

The 1979 Constitution brought with it a realization that constitutional interpretation is different from statutory interpretation. Firstly, Udo Udoma JSC, in *Nafiu Rabiu v The State*,[72] pointed out that the 1979 Constitution was meant to

> establish a framework and principles of government broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural dynamic society, and therefore mere technical rules of interpretation of statutes are to some extent inadmissible in a way as to defeat the principles of government enshrined in the Constitution.

[71] The Fifth Schedule to the 1999 Constitution provides a code of conduct for all public officers.
[72] (1981) 2 NCLR 293 326.

Secondly, Nigerian courts have stressed that in constitutional interpretation their duty is to do substantial justice. An excellent example of this point is found in the case of *Bello v State*,[73] in which the Supreme Court was prepared *suo motu* to devise a remedy for a breach of a right even if the claimant was unable to properly articulate a remedy.

A third principle of constitutional interpretation is that Nigerian courts regularly refer to foreign cases. Where the foreign cases are based on foreign statutes and constitutions with similar or identical provisions to the 1999 Constitution, they carry some weight and have persuasive effect.[74] This has been the dominant practice with respect to all the constitutions of Nigeria. Thus in *Adegbenro v Akintola*,[75] the Privy Council drew attention to the fact that the Constitution of Western Nigeria of 1960 was to be interpreted in its own right even if it derived its origin from British constitutional practice. With respect to the 1979 Constitution, Udo Udoma JSC in *Nafiu Rabiu v State* drew attention to the persuasive effect of foreign cases.

D. Obstacles to constitutional interpretation: The question of *locus standi*

Nigerian courts have for a long time regarded the case of *Adesanya v President of the Federal Republic of Nigeria*[76] as authority for the proposition that only persons with personal standing can bring an action alleging a breach of the Constitution. The harshness of the standing rule has been ameliorated in a number of subsequent cases.[77] The latest is the case of *Fawehinmi v Federal Republic of Nigeria*,[78] where the Court of Appeal held that the requirement for standing is not necessary in constitutional issues.

E. Nigerian courts and political questions

It is remarkable that while Nigerian courts recognized that there were political questions under the 1979 Constitution, this approach has changed in the course of interpretation of the 1999 Constitution. In the course of interpretation of the provisions of the 1979 Constitution ousting the jurisdiction of the courts over impeachment proceedings, in *Musa v Hamzat*,[79] the Court of Appeal regarded this as an example of a political question and refused to inquire into the removal of the Governor of Kaduna State by the Kaduna State House of Assembly. In *Onuoha v Okafor*,[80] the Supreme Court recognized two principles that constitute the political question doctrine in Nigeria. These principles are, first, the lack of satisfactory criteria to determine a

[73] (1986) 12 SC 1.
[74] See *AG Ondo State v Attorney General of the Federation* (2004) 4 NWLR (pt. 772) 222; *IGP v ANPP* (2007) 18 NWLR (pt. 1066) 457.
[75] (1962) 1 All NLR 465.
[76] (1981) 1 ALL NLR (pt. 1) 1.
[77] See *Owodunni v Registered Trustees of the Celestial Church* (2000) 6 SC 60; *NNPC v Fawehinmi* (1998) 7 NWLR (pt. 559) 598.
[78] (2008) 23 WRN 65.
[79] (1982) 3 NCLR 229.
[80] (1983) NSCC 494.

legal dispute, while the second is the appropriateness of attributing finality to the action of a political department or organ of government. As stated above, under the 1999 Constitution Nigerian courts seem to have called into question, if not repudiated, the political question doctrine. In *Inakoju v Adeleke*[81] the Supreme Court held that the ousting of the jurisdiction of the court notwithstanding, Nigerian courts will assume jurisdiction over impeachment matters to ensure that the procedure for impeachment has been strictly followed. In *Ugwu v Ararume*[82] the Supreme Court asserted its jurisdiction in determining the legality of a change of a party candidate and rejected the notion that the selection of party candidates is an internal party affair which should not be entertained by the Court.

VII. International Law and Regional Integration

A. Status of international treaties in Nigeria

The relationship between international law and domestic law in Nigeria is built on a distinction between the making of a treaty and its implementation. Item 26 of the Exclusive Legislative List reserves external affairs to the federal government. This means that the President is the only person with competence to enter into a treaty. It appears that the President's power is not restricted by the division of powers in the Constitution. Thus, even on matters on the concurrent and residual lists, the treaty-making power of the President enables him to enter into treaties concerning matters included on these lists.

The implementation of treaties is, however, a different question. Section 12(1) provides that no treaty between the federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly. Nigeria can therefore be regarded as a dualist country. The scope of section 12(1) was examined extensively in *Abacha v Fawehinmi*,[83] where the status of the African Charter—which had been incorporated into Nigerian law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap 10, Laws of Nigeria, 1990—was in issue. The court held that the African Charter was in force in Nigeria by virtue of the domestic legislation. The court further held that if there is a conflict between Cap 10 and any other statute, the provisions of Cap 10 will prevail over the other statute. The court pointed out that Cap 10 did not prevail over the Constitution. The decision in *Abacha v Fawehinmi* was reaffirmed in *Registered Trustees of National Association of Community Health Practitioners of Nigeria and ors v Medical and Health Workers Union of Nigeria*,[84]where the status of a number of conventions of the International Labour Organisation ('ILO Conventions'), which had not been domesticated in Nigeria, were in

[81] (2007) All FWLR (pt. 353) 3.
[82] (2007) 12 NWLR (pt. 1048) 367.
[83] ILDC 21 (NG 2000), (2000) 6 NWLR (pt. 660) 228.
[84] *Registered Trustees of National Association of Community Health Practitioners of Nigeria and ors v Medical and Health Workers Union of Nigeria*, Final appeal judgment, SC 201/2005; ILDC 1087 (NG 2008), 11 Jan. 2008.

dispute. The Supreme Court held that the ILO Conventions cannot be applied in Nigeria without them being domesticated.

Since Nigeria is a federation with autonomous levels of government, section 12(2) and (3) of the 1999 Constitution appears to take due cognizance of this fact in respect of the implementation of a treaty. Section 12(2) provides that '[t]he National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.' Subsection (3) of section 12 further provides that 'a bill for an Act of the National Assembly passed pursuant to the provisions of subsection (2) of this section shall not be presented to the President for assent, and shall not be enacted unless it is ratified by a majority of all the House of Assembly in the Federation.' Thus, if the matter on which the President has made a treaty on behalf of Nigeria is one on the concurrent or residual list or is reserved for the states, the National Assembly must first adopt a bill and then wait for a similar action by a majority of the State Houses of Assembly before the bill can be presented to the President for his assent. This means that for matters on the Exclusive Legislative List, the National Assembly may adopt a bill which, if assented to by the President, becomes law.

Nigeria is a signatory of, and a state party to, numerous treaties. However, it would appear that there are only a handful of treaties that have been domesticated in Nigeria. In this class will fall the African Charter; the Warsaw Convention;[85] the Extradition Treaty between the Government of Nigeria and the Government of Republic of South Africa; the International Convention for the Safety of Life at Sea; the Treaty to Establish the African Union; the UN Convention on the Carriage of Goods by Sea; and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

B. Nigeria and regional integration

Nigeria is a signatory to the 1993 Revised Treaty of the Economic Community of West African States (ECOWAS). It is, however, a fact that the Revised ECOWAS Treaty has not been domesticated in Nigeria, meaning that in terms of section 12 of the Constitution, the ECOWAS Treaty is not enforceable in Nigeria. However, in order to comply with the obligations of the Revised ECOWAS Treaty and other ECOWAS Protocols, municipal legislation is made in this regard. Thus, the Motor Vehicles (Third Party Liability) Insurance Act, Cap M3, Laws of the Federation of Nigeria 2004, was made pursuant to the ECOWAS Free Movement Protocols.

C. Status of customary international law

[85] See *Oshevire v British Caledonian* (1990) 7 NWLR (pt. 163) 507; *African Re-Insurance Co v Fantaye* (1986) NSCC 337; *Harka Services Ltd v Keazor* (2006) 1 NWLR (pt. 960) 160; *Cameroon Airlines v Abdulkareem* (2003) 11 NWLR (pt. 830) 1.

It can be said with some measure of authority that customary international law applies in Nigeria by virtue of its principles becoming principles of Nigerian common law. In *Oluwalagbon v Government of the United Kingdom*,[86] the Court of Appeal recognized the principle of sovereign immunity as part of Nigerian common law. This does appear to permit Nigerian courts to apply principles of international customary law.

SELECT BIBLIOGRAPHY

Genesis of the Constitution

Books & Collections

Ben O Nwabueze, *A Constitutional History of Nigeria* (Longman, New York, 1982)

Kalu Ezra, *Constitutional Development in Nigeria* (Cambridge University Press, London, 1964)

Teslim Olawale Elias, *Nigeria: A Development of its Laws and Constitutions* (Stevens & Sons, London, 1967)

Udo Udoma, *History and the Law of the Constitution in Nigeria* (Malthouse, Lagos, 1994)

Uma Eleazu, *Federalism and Nation-Building: The Nigerian Experiences, 1954–1964* (Arthur Stockwell, Iltracorde, 1977)

Ignatius Akaayar Ayua and Dakas CJ Dakas, 'Federal Republic of Nigeria', in John Kincaid and G Alan Tarr (eds), *Constitutional Origins, Structures, and Change in Federal Countries*, (McGill-Queen's University Press, Montreal and Kingston, 2005) 241–248

General and Comprehensive Works on the Nigerian Constitution

Books and Collections

Ben O Nwabueze, *The Presidential Constitution of Nigeria* (Sweet & Maxwell, London, 1983)

Kehinde Mowoe, *Constitutional Law in Nigeria* (Malthouse Press, Lagos, 2008)

[86] (2005) 14 NWLR (pt. 946) 760. See also *African Re-insurance Corporation v Fantaye* (1986) 3 NWLR 81; *k* (2004) 12 CLRN 93.

Peter Oluyede and David Aihe, *Cases & Materials on Constitutional Law in Nigeria* (University Press PLC, Ibadan, 2003)

Articles and Periodicals

Solomon Ukhuegbe, 'A Preface to Constitutional Law' (1995) 2 University of Benin Law Journal 14–40

Aboyi J Ikongbeh, 'Separation of Powers under the Constitution of Nigeria 1999: A Critical Review of its Application since 29th May 1999' (2003) 1 Nigerian Bar Journal 91–116

Dennis Ewelukwa, 'The Rule of Law' (1994–1997) 6 The Nigerian Juridical Review 1–20

Kaniye SA Ebeku, 'Nigeria's New Constitution for the Third Republic: An Overview' (1993) 5 African Journal of International and Comparative Law 581–608

Federalism

Books and Collections

Ben Nwabueze, *Federalism in Nigeria under the Presidential Constitution* (Sweet & Maxwell, London, 1983)

Ben Nwabueze, *How President Obasanjo Subverted Nigeria's Federalism* (Gold Press Ltd, Ibadan, 2007)

Alex Gboyega, *Political Values and Local Government in Nigeria* (Malthouse, Lagos, 1987)

IB Bello-Imam, *Local Government in Nigeria: Evolving a Third Tier of Government* (Heinemann, Ibadan, 1979)

Peter Ekeh and Eghosa E Osaghae (eds), *Federal Character and Federalism in Nigeria* (Heineman, Ibadan, 1989)

Rotimi Suberu, *Federalism and Ethnic Conflict in Nigeria* (United States Institute of Peace, Press Books, Washington DC, 2001)

J Isawa Elaigwu, 'The Federal Republic of Nigeria', in Akhtar Majeed, Ronald L Watts and Douglas M Brown (eds), *Distribution of Powers and Responsibilities in Federal Countries*, (McGill-Queen's University Press, Montreal and Kingston, 2006) 208–237

Akpan H Ekpo, 'Federal Republic of Nigeria', in Anwar Shah (ed), *The Practice of Fiscal Federalism: Comparative Perspectives* (McGill-Queen's University Press, Montreal and Kingston, 2007) 204–234

Journals and Periodicals

Alex Gboyega, 'Federal Character or the Attempt to Create Representative Bureaucracies in Nigeria' (1984) 50 International Review of Administrative Service 17–24

Eghosa E Osaghae, 'The Complexity of Nigeria's Federal Character Principle' (1988) 16 Journal of Ethnic Studies 1–25

Ladipo Adamolekun (ed), 'Federalism in Nigeria: Toward Federal Democracy' (1991) 21 Publius: The Journal of Democracy

Victor O Ayeni, 'The Illusion of Three-Tier Federalism: Rethinking the Nigerian Local Government System' (1994) 7 International Journal of Public Sector Management 52–65

Judiciary

Books and Collections

Chucks Okpaluba, *Judicial Approach to Constitutional Interpretation in Nigeria* (Matt Madek & Co, Enugu, 1992)

Enyinna Nwauche, 'Is the End Near for the Political Question Doctrine in Nigeria', in Charles Fombad and Christina Murray (eds), *Fostering Constitutionalism in Africa* (Pretoria University Law Press, Pretoria, 2010) 31–60

Articles and Periodicals

Abimbola Olowofeyekwu, 'The Beleaguered Fortress: Reflections of the Independence of the Judiciary' (1989) 33 Journal of African Law 55–71

Okechukwu Oko, 'Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria' (2005) 31 Brooklyn Journal of International Law 9–82

Hakeem Yusuf, 'The Judiciary & Political Change in Nigeria' (2009) 7 International Journal of Constitutional Law 654–682

BO Okere, 'Judicial Activism or Passivity in Interpreting the Nigerian Constitution' (1987) 36 ICLQ 788–816

Osita Nnamani Ogbu, 'The Judiciary in a Polity – A Force for Stability or Instability: Nigerian Experience' (1999) 11 African Journal of International and Comparative Law 724–738

Tunde Ogowewo, 'Wrecking the Law: How Article III of the Constitution of the United States led to the Discovery of the Law of Standing to Sue in Nigeria' (2000) XXVI Brooklyn Journal of International Law 527–589

Nkeonye Otakpor, 'Nigerian Judiciary: Activism or Benign Policy Making' (1995) 2 University of Benin Law Journal 1–13

Oyelewo Oyewo, 'The Judiciary in Periods of Political Crisis and Conflicts in Nigeria' (1998) 10 African Journal of International and Comparative Law 507–521

Human Rights

Books & Collections

Awa Kalu and Yemi Osibanjo (ed), *Perspectives on Human Rights* (Federal Ministry of Justice, Lagos, 1992)

Osita Nnamani Ogbu, *Human Rights Law and Practice in Nigeria: An Introduction* (CIDJAP Press, 1999)

MAAjomo, 'Human Rights and the Nigerian Judiciary', in TO Elias and MI Jegede (eds), *Nigerian Essays in Jurisprudence* (MIJ Publishers Ltd, Lagos, 1993)

Journals & Periodicals

Itse Sagay, 'Liberty and the Rule of Law as Inalienable Rights of Nigerian Citizens' (1995) Nigerian Current Law Review 15–41

Enyinna Nwauche, 'Law Religion and Human Rights in Nigeria' (2008) 8 African Human Rights Law Journal 568–595

Andrew Ubaka Iwobi, 'Tiptoeing Through a Constitutional Minefield: The Great Sharia Controversy' (2004) 48 Journal of African Law 111–164

Legislature

Articles and Periodicals

Abiola Ojo, 'The Investigatory Powers of the National Assembly under the Constitution: Sections 82 and 83 Considered' (1984) 12 The Nigerian Law Journal 49–64

Tahir Mamman and Maryam G Ishaku, 'Powers, Functions and Limitations of the Legislature in Nigeria' (2000) 7 Abia State University Law Journal 31–44

Dejo Olowu, 'Parliamentary Control of Public Finances in Nigeria: The Constitutional and Structural Dimensions Examined' (2001) IV LASU Law Journal 10–23

Comparative Works Involving Nigeria

Articles and Periodicals

Gordon A Christenson, 'Core Problems in Nigerian and US Constitutions: A Study in Difference' (1991) 3 African Journal of International and Comparative Law 276–338

Hakeem Ogunniran, 'The Successive Demise of the Doctrine of State Immunity from Tort Liability: A Comparative Appraisal with Emphasis on the Nigerian Experience' (1992) 4 African Journal of International and Comparative Law 369–394

Chucks Okpaluba, 'Justiciability and Constitutional Adjudication in the Commonwealth: The Problem of Definition (1)' (2003) 66 THRHR 424–449

Chucks Okpaluba, 'Justiciability and Constitutional Adjudication in the Commonwealth: The Problem of Definition (II)' (2003) 66 THRHR 610–633

James S Read, 'The New Constitution of Nigeria: The Washington Model' (1979) 23 Journal of African Law 131–174

Joachim Wehner, 'Parliament and the Power of the Purse: The Nigerian Constitution of 1979 in Comparative Perspectives' (2002) 46 Journal of African Law 216–231

Peter Slinn, 'A Fresh Start for Africa? New African Constitutional Perspectives for the 1990s' (1991) 35 Journal of African Law 1–7

International Law and Regional Integration

AO Enabulele, 'Implementation of Treaties in Nigeria and the Status Question: Whither Nigerian Courts?' (2009)17 African Journal of International and Comparative Law 326–341

M Leann Brown, 'Nigeria and the ECOWAS Protocol on Free Movement & Residence' (1989) 27 Journal of Modern African Studies 251–273

Yemi Osinbanjo, 'Sovereign Immunity in International Commercial Arbitration: The Nigerian Experience and Emerging State Practice' (1992) 4 African Journal of International and Comparative Law 1–25

Yinka Omoroegbe, 'The Legal Framework for Economic Integration in the ECOWAS Region: An Analysis of the Trade Liberalisation Scheme' (1993) 5 African Journal of International and Comparative Law 355–370

Sunday B Ajulo, 'Sources of the Law of the Economic Community of West African States (ECOWAS)' (2001) 45 Journal of African Law 73–96

Selected Constitutional Themes

Abiola Ojo, *Constitutional Law and Military Rule in Nigeria* (Evans Bros, Ibadan, 1987)

Okay Achike, *Groundwork of Military Law and Military Rule in Nigeria* (Fourth Dimension Publishers, Enugu, 1978)