

# **Nigerian Federalism in Crisis**

Critical Perspectives and Political Options

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Ebere Onwudiwe  
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Foreword by Professor Eghosa E. Osaghae

# **Nigerian Federalism in Crisis: Critical Perspectives and Political Options**

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**Ebere Onwudiwe and Rotimi T. Suberu**

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**PROGRAMME ON ETHNIC AND FEDERAL STUDIES (PEFS)**

Department of Political Science

University of Ibadan, Ibadan, Nigeria

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**ABOUT THE PROGRAMME ON ETHNIC AND FEDERAL STUDIES**

Africa provides one of the most important laboratories for the production of knowledge in ethnicity and its management. This is in view of the widely held, but partly misleading, belief that most political conflicts in Africa are ethnic. Ethnic "productivity" in Africa also extends to the wide diversity and rich complexion of the conflicts. The broad spectrum of ethnic conflicts which arise from minority problems, elite division and competition, bi-ethnic and multi-ethnic situations, state actions, uneven development, as well as multiple cleavage complexes where ethnicity is recursive with religion, race, regionalism and so on, are well represented.

The diversity, complexity and intractability of these conflicts have posed some of the greatest challenges to the theory and practice of conflict management and resolution. Tested and conventional formulas of conflict management and transformation have not had much success. This has led to the search for more creative strategies in such previously neglected areas as indigenous or traditional forms of conflict resolution. Theories and paradigms of federalism are also being re-examined for new lights on peaceful and constitutional approaches to constitutional conflicts.

It is to give this search the much needed scholarly verve, and to translate theories into practical problem-solving models and strategies, that the Programme on Ethnic and Federal Studies (PEFS), an independent, non-profit research programme, was established in the Department of Political Science, University of Ibadan, Nigeria, in May 2000. This was done with the financial support of the Ford Foundation. PEFS is located in the Institute of African Studies of the University.

# Contents

Foreword / v

## **PART 1: RETHINKING THE FEDERAL SOLUTION IN NIGERIA**

- Chapter 1: Introduction: The Promise and Pitfalls of Nigerian Federalism / 3  
*Ebere Onwujiwe and Rotimi T. Suberu*
- Chapter 2: Federalism and the Theory of the State / 15  
*Fred Onyeoziri*
- Chapter 3: Federalism and Conflict Resolution / 28  
*Celestine Oyom Bassey*
- Chapter 4: Federalism and National Cohesion in Nigeria / 49  
*Emmanuel O. Ojo*
- Chapter 5: The Quest for "True Federalism" and Political Re-structuring:  
Issues, Prospects and Constraints / 66  
*Kola Olufemi*

## **PART 2: THE RE-CONFIGURATION OF THE NIGERIAN FEDERATION**

- Chapter 6: Nigerian Wartime Quasi-Federation, 1967-1970 / 79  
*Osarhieme Benson Osadolor*
- Chapter 7: The Civil War and Federalism in Nigeria / 100  
*Sam Egwu*
- Chapter 8: How the Military Ruined Nigeria's Federalism / 114  
*O.B.C. Nwolise*

## **PART 3: REGIONAL ISSUES AND PERSPECTIVES**

- Chapter 9: Federalism in Nigeria: Northern Nigerian Perspectives / 127  
*Pita Ogaba Agbese*
- Chapter 10: Religion, Federalism and the Shari'a Project in Northern  
Nigeria / 147  
*Kyari Mohammed*
- Chapter 11: Nigerian Federalism as Viewed by Eastern Thinkers / 165  
*Ebere Onwujiwe and Richard L. Sklar*
- Chapter 12: Southern Minorities, Hegemonic Politics and Revenue Allocation  
in Nigeria / 172  
*V. Adefemi Isumonah*

- Chapter 13: Oil and Federalism in Nigeria / 187  
*Cyril I. Obi*
- PART 4: THE FEDERAL PROCESS: INTERGOVERNMENTAL RELATIONS, THE POLICE AND PARTY POLITICS**
- Chapter 14: Federal Structure, Decentralisation and Government Performance in Nigeria / 207  
*A. Carl LeVan*
- Chapter 15: Intergovernmental Relations and the Strengthening of the Nigerian Federation / 220  
*E. Remi Aiyede*
- Chapter 16: Federalism, Policing and Police in Nigeria / 231  
*Etannibi E.O. Alemika*
- Chapter 17: Political Parties and Federalism in Nigeria / 247  
*Dauda Abubakar*
- PART 5: FEDERALISM AND CIVIL SOCIETY ORGANISATION**
- Chapter 18: Civil Society and Federalism in Nigeria / 263  
*Said Adejumbi*
- Chapter 19: The Press and Federalism in Nigeria / 280  
*Ray Ekpou*
- PART 6: CONCLUSION**
- Chapter 20: Conclusion: Beyond the Travails of Federalism in Nigeria / 293  
*Rotimi T. Suberu*
- Index / 307

## Intergovernmental Relations and the Strengthening of the Nigerian Federation

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### INTRODUCTION

Since the return to civil rule, Nigeria has witnessed several intergovernmental conflicts over jurisdictional powers. This is occurring not only between the states and local governments, but also between the state governments and the federal government. The federal structure has come under attack in these conflicts as the state governments challenge the national government's actions in channelling revenue directly to the local governments, in making first-line deductions from the Federation Account and in making unilateral decisions on proceeds from privatisation and excess crude oil sales, and so on. Several groups within civil society have also called for federal restructuring, as sections of the Nigeria population challenge the current federal arrangement.

There have been intergovernmental arguments and threats over responsibility for the maintenance of critical infrastructure like roads. Some state governments have called for state police and officially recognised local vigilantes and militias, such that the national government had to outlaw such organisations. Some states have introduced shari'a as the official religion, raising questions concerning the legality of such actions and the implication for the secularity of the state. Still, some states have made outright challenges to the powers of the federal government over local government. Pressure for local control of resources were very vehement until the Supreme Court's famous judgment of 5 April 2002, and the subsequent effort to employ a political solution to the problem

The many issues raised, as well as the vehemence with which they were pursued, reveal the weak nature of intergovernmental relations institutions in Nigeria's federal

practice as handed down by the military régimes. Indeed, the return to civil rule has exposed the irrational underbelly of the decentralisation programs in Nigeria under the military, especially as they have arrested and distorted the development of a strong intergovernmental framework for the Nigerian federation. This has thrown up issues regarding the viability of Nigerian federalism and the consequences of political restructuring for the effort towards making government more responsive and accountable to the populace. Beyond this, developments since 1999 point to a fundamental question of the relationship between federalism and democracy. Nowhere is the urgency of this question more fully manifested than in the use and workings of intergovernmental relations processes and institutions.

#### FEDERALISM, INTERGOVERNMENTAL RELATIONS, AND DEMOCRACY

Federalism is usually viewed as a "form of governmental and institutional structure, deliberately designed by political "architects", to cope with the twin but difficult tasks of maintaining unity while also preserving diversity" (Jinadu, 1979:15). It is essentially a form of government in which the component units of a political organisation participate in sharing powers and functions in a cooperative manner in the face of the combined forces of ethnic pluralism and cultural diversity, among others, which tend to pull their people apart. This arrangement is to provide room for the co-existence of centrifugal and centripetal forces (Tamuno, 1998:13).

Within a federal arrangement, each state government is usually saddled with specific responsibilities and so carries its own paraphernalia of administrative institutions like the civil service, the police, and parastatals. These co-exist with and relate to national institutions. So, relations between the tiers of government affect the effective operation of the holistic administration of the country as well as administration of the individual units. The nature of these relations defines the particular type of federalism being practised. Thus, the character of intergovernmental relation is very critical to the operation of a federation. In the words of Cameron (2001:121) "intergovernmental relations (IGR) is the workhorse of any federal system: it is the privileged instrument by which the job — whatever the job — gets done".

While the defining feature of federalism may be the distribution of powers between the centre and the constituent units by constitutional means (Osaghae, 1990), the theory of cleanly separated jurisdiction and watertight compartments makes little sense in practice. Indeed, there are various emphases and orientations in justifying federal projects. Some place emphasis on geographical concerns, while others emphasise the need for mutual regional security architecture or economic advantages. Emphasis could also be territorial or non-territorial, constitutional or non-constitutional. Federalism is pluralistic in terms of the content of various federal projects worldwide (Smith, 1995). Hence, Osaghae (1999) observes that it has become "a highly flexible and relative concept". Even so, a federation can safely be defined as "an institutional arrangement, taking the form of a sovereign state and distinguished from other forms of state solely by the fact that its central government incorporates regional units in its decision procedure on some constitutionally entrenched basis" (King, 1982:77). Toleration, respect, compromise, bargaining, and mutual recognition

characterise federalism. "Union" combined simultaneously with "autonomy" is its flagship (Burgess and Gagnon, 1993: 7).

The very nature of IGR is such that it calls for a deeper engagement with the relationship between federalism and democracy. Intergovernmental relations can be effective and authentic only in a democratic setting, because, typically, they involve mutual recognition, cooperation, respect, bargaining, and negotiation. Because dictatorship often carries the possibility of the national government usurping federation functions, it remains a threat to institutionalising intergovernmental relations, thereby federalism. Thus, the basic requirement for federalism is a bit higher than that postulated by Elazar (1977:30-31) to the effect that "Federalism can exist only where there is considerable tolerance of diversity and willingness to take political action through the political arts of negotiation, even when the power to act unilaterally is available. The usual prerequisite to action in federal systems is the ability to build consensus rather than the power to threaten coercion". By setting constitutional limits on central and regional governments, federalism disallows dictatorial and authoritarian practices. Federalism demands the rule of law, as well as respect for fundamental freedoms and democracy.

Given the foregoing, it is important to note that there are factors that affect the condition of intergovernmental relations in any federal system. This include the society of which IGR forms a part, the constitutional régime within which they are set, the governmental institutions of which they are in part the expression, and the internal and external conditions that shape the life of the given country at a particular time.

Societal factors include the country's demography; its racial, religious, linguistic, and cultural composition; and the traditions and common political experience of the state. The constitutional and institutional factors are such factors as the number and relative size of the units in a federation, the degree of asymmetry among them, the type of government, whether parliamentary or presidential, and the degree of formality or informality in the structure of government envisaged by the legal system. Political factors relate to the type of electoral system, the party system, and the degree of decentralisation and centralisation. Finally, real-life or peculiar circumstances such as the presence of an external threat, attempt at secession by one unit, or war conditions can sometimes cause the suspension of the federal system and its normal pattern of intergovernmental relations (Cameron, 2001).

IGR processes can take several forms. They may be highly institutionalised with formal structures, channels, and processes, or they may be informal or ad hoc. They often vary to the extent that they involve decision-making.

#### THE CONDITION OF INTERGOVERNMENTAL RELATIONS IN NIGERIA

Three factors have been critical to federalism and intergovernmental relations in Nigeria. These are the civil war, military rule, and the oil economy. These factors have not only determined the structure of intergovernmental relations, but also conditioned the character and content of intergovernmental institutions, as well as their use and effectiveness.

Nigeria operated a federal system characterised by a relatively weak centre until

the military usurped political power through a coup d'état in 1966. General Aguiyi-Ironsi's failed attempt to transform Nigeria into a unitary state in 1966 made it clear to subsequent military governments that they could not change the formal character of the country as a federal state without severe consequences. In spite of this, the civil war (1967-70) provided sufficient justification for imposing the military command processes on the administration of the country by piecemeal legislation and sundry actions. For instance, the division of the country into twelve states in 1967 and the centralisation of the management of resources were implemented to support the war effort. According to Decree No. 27 of 1967, the "Legislative and Executive powers of the newly created states in Nigeria were limited for the time being to residual matters".

Indeed, General Yakubu Gowon assured Nigerians that national institutions would be re-defined after the war through a constitution that would be drafted by representatives of all sectors of the country. However, he later announced in 1974 that the implementation of the third national development plan had made it imperative that resource management remain centralised. According to him, "If we are to rely on existing revenue allocation formulas, no state government except two will be in a position to finance even a single year's programme on the basis of the projected surplus". The centralisation of the management of resources, attended by a greater intervention of the central government in the economy, though essentially triggered by the civil war, was sustained and furthered by the military command approach to governance. This, however, does not imply that issues that led to the war were not significant.

The impact of military dictatorship is chiefly in the super-imposition of the military command processes on the Nigeria federal structure, such that by 1999 many people believed that Nigeria was a unitary state in federal disguise.

The centralised processes of administration empowered the central government to exercise authority in its relations with the state in a manner characteristic of a unitary system of government. The command processes enabled the central government to use its acquired powers to alter unilaterally and in its favour the existing distribution of powers between it and other tiers of government, as demonstrated in its usurpation of functions previously allocated to the lower tiers and those hitherto performed by specific intergovernmental structures.

Thus, the relative independence of state governments in certain matters that defined the federal character of the country was removed. This constitutes a major distortion of intergovernmental relations in a federal system. This distortion, which deepened as the years wore on, is graphically described by Babangida's chief of general staff and vice-president, Admiral Augustus Aikhomu: "Military governors were on military posting and were thus required to take directives from the central administration. First, the office of the Chief of General Staff (CGS) maintained close supervision of state military governors. As a control measure, yearly budget guidelines were issued by the vice-president (previously CGS) to the military governors who were subsequently physically present at (the) headquarters to defend their budgets". He added that the central government monitored the observance of these directives and duly

penalised defaulters (Aikhomu, 1996:51).

Clearly, authoritarian military rule precluded the possibility of state and local government enforcing constitutional rights as stakeholders in the federal arrangement when the national government disregarded transparency, equity, and accountability measures in the operations and management of the federation. This acquired superiority of the federal government under the military was demonstrated in the practice of states and local governments' reorganisations and the practice of fiscal federalism.

In fact, all the constitutions promulgated by the military provided for a high degree of concentration of power at the centre. Many matters that were previously in the concurrent list were transferred to the exclusive list, and even those that were still left in the concurrent list were treated as if they were exclusive to the national government. While there were 45 items in the Exclusive Legislature List in the 1960 and 1963 Constitutions, there are 66 items in the Exclusive List of the 1999 Constitution (Sagay, 2001). Under the 1999 Constitution, the national government enjoys powers over the direction and management of the whole of the Nigerian economy and the promotion and enforcement of the observance of the fundamental objectives and directive principles of the Nigerian federation (*see*, Asobie, 1998: 27).

This degree of centralisation has been facilitated by the massive in-flow of oil dollars since the 1970s. Oil has been the single most important source of revenue to the Nigerian state, accounting for over 95 percent of external revenue and 70 percent of total revenue since the 1970s. The contribution of the oil sector to total export stood at 98.7 percent in 2000 (CBN 2000:56).

It has been easier for the national government to corner revenue from oil to such an extent than it would have been possible if the oil economy were not an enclave economy. The techno-economic autonomy of the oil industry was transformed into the socio-economic autonomy of the state vis-à-vis the society and the socio-economic superiority of the central government vis-à-vis the other tiers of government. The states were simply unable to resist the national government on economic matters concerning their own separate administrative units, because they depend on it for survival. By the mere issuance and enforcement of the Petroleum Decree (No. 51) of 1969, the federal military government vested the ownership and control of all petroleum resources in, under, or upon any lands in Nigeria in the national government. Thus, in Nigeria today, the national government exercises absolute ownership over minerals found in any land or maritime territory of the country. This status of the national government has been reinforced and extended by decrees — No. 15 of 1967, No. 13 of 1970, No. 9 of 1971, and No. 6 of 1975. Those decrees tilted the balance of control and access to revenue towards fiscal centralisation at the national level (Obi, 1998:265). The 1999 Constitution by and large secures this fiscal centralisation.

Thus, with absolute ownership and control over Nigeria's major source of revenue (minerals), the central government under the military has been positioned as a rich patron dictating to the states and reducing them to dependents and clients in Nigeria's largely distributive federal system. The range and quantum of resources (coercive, bureaucratic, ideological, and financial) directly available to lower tiers of government have reduced substantially relative to that at the disposal of the national government.

The central government also enhanced its economic status at the expense of the other tiers of government by manipulating the exchange rate of the dollar to the naira in disbursing the monies allocated to the other tiers of government from the Federation account. It made first-line deductions from the federation account for funding centrally-controlled items like the stabilisation funds, dedicated accounts, petroleum trust fund, external debt service, and other so-called national priority projects (Suberu, 1998:278). The central government under the military, disregarding traditional and constitutional procedures, also unilaterally reorganised states and local governments. Under constitutional rule, the creation of a state involved an elaborate political and intergovernmental process culminating in a referendum. Under the military, states and local governments were created by decrees preceded only by a commission set up to look into the possibilities of fresh reorganisation exercises. That is why it was easy for states and local governments to be created in rapid succession, always leaving a trail of controversies, violent conflicts, and fresh calls for new states and local governments. So far, of the 36 states created out of the original three regions of the country at independence, only the defunct Midwestern region created in 1963 was done under constitutional rule.

Since the return to civil rule, there have been some fresh calls for state creation but these have proven to be a remote possibility. Even the efforts by some state governments to create additional local governments have been effectively stalled by the elaborate constitutional and intergovernmental processes involved.

The controversies and conflicts that have trailed state and local government creation have been generated by the political and economic consequences of such exercises for individuals and communities as actors in the politics of distributive federalism in Nigeria. Fiscal relations between the states and the centre were reorganised and re-defined by the military in a manner that rendered the creation of states and local governments a veritable avenue for political and material advancement by local élite and their communities (Suberu, 1998: 280).

By 1976, when oil became the mainstay of the economy, derivation had become insignificant as a factor in the distribution of revenue among sub-national governments. This was contrary to what obtained in the period when agricultural produce was the mainstay of the economy (Tobi, 1991). Further, since the 1980s, considerable importance has been given to inter-state or inter-local government equality in the distribution of allocation from the Federation Account. This, for all distributional purposes, implies that once a state or local government is split into two, each of the parts become equal with other local governments that remained intact with respect to the size of allocation to be received automatically from the Federation Account.

Also, vertical revenue sharing and tax powers have been revised in such a way that they are skewed in favour of the national government by eroding the tax basis and powers of sub-national governments. The consequent financial dependence on the centre by the states and local governments serves to strengthen the influence and powers of the former over and above the latter. Thus, intergovernmental processes for all practical purposes have become subordinated to the politics of patronage, in the broader effort to legitimise autocratic military régimes.

Intergovernmental relations institutions and processes that were designed to answer to federation issues were usurped by the central military governments and reduced to mere instruments of régime sustenance. Where they were found of little use for this purpose, they were rendered moribund and new institutions were established to answer to emerging challenges and conflicts largely arising from arbitrary federal restructuring.

The military juntas transformed the central government's leadership and policy-shaping roles into central government superiority in all spheres vis-à-vis the states. The enormous powers with which the central government was endowed were then abused in executing certain functions hitherto performed through intergovernmental frameworks like the restructuring of internal boundaries of the federation, the determination of revenue jurisdictions, and the adjustment of the revenue allocation formula. These actions not only distorted existing intergovernmental frameworks, but also they arrested their further development. In their place, the military régimes created new institutions purportedly designed to promote positive intergovernmental relations. But the irrelevance of these institutions amply demonstrated that they were merely a camouflage for the divide-and-rule politics and centralised approach to governance that dominated the military era. Little wonder then that such institutions, whether the Revenue Mobilisation Allocation and Fiscal Commission, the Federal Character Commission, or the National Commission for Intergovernmental Relations, etc., were of little use during the series of conflicts and crises that preceded or followed the annulment of the 12 June 1993 presidential elections.

The return to democratic rule has opened the space for the re-installation of intergovernmental frameworks that were grounded by the military. It has also provided new opportunities for democratic innovations and the test of those institutions bequeathed by the military. Experience in the Fourth Republic shows that these frameworks are very critical to re-invigorating the federation and resolving some key issues relating to federal restructuring and political stability.

#### EXPERIENCE FROM THE FOURTH REPUBLIC

It has become fashionable to call for a national conference (whether sovereign or otherwise) as the veritable way to the resolution of issues that are related to what is popularly referred to as the national question in Nigeria. Politicians and scholars alike do not hesitate to talk about the need to return the country to "true federalism". But the issues in contention hold the chance of being resolved when they are introduced into appropriate extant governmental decision-making processes where the meaning and content of fluid concepts such as true federalism, federal re-structuring, and resource control thrown up in the debates are analysed, debated, and tested. Intergovernmental frameworks provide a window of opportunity for putting them into the policy agenda.

Unfortunately, the problem of leadership which has been identified as the bane of Nigeria's development has reared its head in the failure of a substantial section of the Nigerian ruling élite to engage intergovernmental institutions to deal with these issues. They have preferred to whip up ethnic sentiments in the pursuit of "equity, and justice". The same leaders of ethnic nationalities who continue to discredit the Abubakar

transition and the current political arrangement as illegitimate do not hesitate to stand up in defence of one of their own who is about to be removed from office for alleged criminal activity or abuse of office. This ambivalent attitude towards governmental processes remains one of the greatest obstacles to the institutionalisation of democratic politics in Nigeria. For instance, when Dr Chuba Okadigbo, an Igbo, was to be impeached as senate president following his indictment in the report of the Idris Kuta Panel that investigated contract awards in the senate, the Ohaneze Ndigbo rose in his defence. Similarly, the Afenifere and the Odu'a Peoples Congress warned about the grave consequences for the country in the event of the impeachment of Obasanjo, a fellow-Yoruba, during his many face-offs with the legislature. The National Assembly had consistently accused him of constitutional breaches. These organisations have been in the forefront of the call for a sovereign national conference, while describing the General Abdusalami Abubakar transition, and the 1999 Constitution that is currently operational, as a fraud.

Currently, the Nigeria federation has constitutional and non-constitutional institutions of intergovernmental relations that can be utilised for the purpose of dialogue on pressing federation issues. These include national Council of States, the Courts, especially the Supreme Court, the various conferences of governors, the political parties, National Economic Council, Committee of Traditional Rulers and Leaders of Thought, the National Assembly, Federal Character Commission, and so on. These institutions must be utilised, tested, and refined by introducing several of the problems that continue to dog Nigeria's federalism. Until this is done, it will remain misguided to assume that a single conference, no matter how representative, can resolve or provide an unimpeachable foundation for dealing with national issues once and for all (*see also*, Suberu, 2001:463). Experience from the Nigerian past does not buttress that view nor does current experience and the constellation of political forces support it. In fact, experience with the Year 2002 Electoral Bill palaver and the resource control movement show that the intergovernmental mechanisms are workable after all.

Concerning the first instance, it should be recalled that local government reforms were gradually taken over from the states by the national government from 1976 under the military. Military juntas' penchant for unconstitutional and arbitrary behaviour was displayed in local reorganisation under Generals Babangida and Abacha. Babangida executed structural changes by creating additional local governments three times in his 8-year rule. Laws governing local governments were altered to suit the whims and caprices of the dictator. Babangida removed elected local government chairmen at will. Indeed, Decree 15 of 1989 vested the power to dissolve a council or remove an elected local government chief executive in the military president.

Under General Abacha, additional local government areas that were arbitrarily created were trailed by widespread inter-communal conflicts. He freely removed local government officials, in some instances replacing them with retired military officers. Five percent of statutory allocations to local government were paid to traditional rulers to garner their support for his self-succession project.

These records, coupled with the ambivalent provisions for the control of local

government in the 1999 Constitution, ensured that the status of local governments was unclear at the inception of democratic rule. When the present government came on board, some officials of the national government fell into the temptation of carrying on with the federal government interventionism in local government affairs. This was brazenly displayed in the promulgation of the 2001 Electoral Act with which the national government sought to, among other things, extend the tenure of elected local government officials from 3 years to 4 years. At first, several state governments threatened to take the law into their hands by unilaterally dissolving local government councils and conducting elections into local councils at the end of the original three-year period. These moves generated a lot of heat until the case was resolved through judicial intervention. The Supreme Court's judgment of 28 March 2002 clarified the limits of the powers of the national government over local governments. In its judgment the Court declared that no law by the National Assembly could validly increase or alter the tenure of elected officers of local governments. In the opinion of the Court only the State House of Assembly can make laws on elections for posts in local government. The Court further ruled, "All residual legislative powers with respect to Local Government Councils are, subject to the Constitution, vested in the House of Assembly."

Witness also the controversy that attended the agitation for resources control. The Meeting of Governors and Members of the National Assembly from the South-South geo-political zone, comprised largely by oil-producing communities, pressed for state control of resources. They wanted the Land Use Act and other obnoxious laws, which empower the federal government to control the natural resources found in the territories of their communities, abolished. They also contested the distinction between offshore and onshore oil in the implementation of the 13 percent derivation revenue allocation to oil-producing states by the federal government by insisting that offshore oil belongs to the communities. The federal government maintained that offshore resources belongs to the federation. The oil-producing states pursued this position through a series of public declarations and communiqués. A bill was tabled before the house of representatives on 9 May 2001 by Representative Harriman of Delta state and 13 others requesting the amendment of the Petroleum Act to (i) compel oil companies to site their headquarters in their main areas of operation, (ii) vest the ownership and control of petroleum resources in the oil-producing states, local governments, and communities, thus reversing the spirit of the extant laws, (iii) reserve seventy percent of the employment opportunities in the oil companies for Nigerians, (iv) encourage local businessmen and investors to participate in all aspects of oil operation, and (v) reduce tension, poverty, and violence in the oil-producing communities through the provision of better living conditions (Abati, 2001:10). The bill threw the house into a tempestuous session and was thrown out with 81 No votes against 64 Yes votes along a sharp North-South divide.

The federal government went to the Supreme Court to determine the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resource derived from the state pursuant to s.162(2) of the 1999 Constitu-

tion. The oil-producing states, in making a counter-claim, argued that natural resources located offshore ought to be treated or regarded as located within their respective states. In an omnibus judgment on 5 April 2002, the Supreme Court declared that the eight littoral states could not legally seek to control natural resources located beyond their seaward boundary. The Court also declared unconstitutional the federal government's refusal to begin sharing of the 13 percent derivation formula from May 1999, and the First Line Deduction System (FLDS), the latter a procedure whereby the federal government first deducts a percentage of funds credited to the Federation Account for sundry "national" obligations before sharing the balance among the federal, state, and local governments.

Following this judgment, the federal government spearheaded the adoption of a political solution to the onshore-offshore dichotomy as a way of containing the continuing agitation over the issue in the Niger Delta.

#### CONCLUSION

Intergovernmental frameworks are the workhorses with which federalism gets the job done. But the frameworks are themselves sharpened and given life through engagement in the effort to advance a federal project.

The crisis of federalism in Nigeria owes much to the failure to institutionalise intergovernmental relations processes within the Nigerian federation. This failure was conditioned by the civil war and the centralising tendencies of military dictatorship propped up by the political economy of oil. Military rule frittered away opportunities for crystallising and legitimising federalist intergovernmental institutions.

Democratisation holds the chance of restoring and developing intergovernmental conflict management processes, which can become viable channels of resolving many of the now challenging federation issues. But this promise can only be realised where issues are channeled through these mechanisms as demonstrated by the recent experience involving the 2001 Electoral Act and the resource control issue. The leadership challenge for the Nigerian élite in this regard is to work through institutions rather than undermine and de-legitimise them in the struggle for power.

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