

# **A Constitution**

For the Union of Nigeria

## **FOREWORD AND EXPLANATORY NOTES**

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**NOTE**

**A Constitution for the Union of Nigeria**

1. To symbolise a new beginning, we suggest "the Union of Nigeria" in place of the Federal Republic of Nigeria.

### **Preamble**

2. An explicit reference in the Preamble to the Constitution to our past experience is necessary to serve as a continuous reminder to us and to generations to come of the genesis of this new relationship. Peace, respect and support are to be the cornerstones of the new Union being, as they are, the very hallmarks of a family.

### **CHAPTER I – The Union of Nigeria**

3. For the first time in our collective history, the nations that preceded the formation of Nigeria by the British in 1914 are recognised as the partners in the Union.

Our position, which is informed by the experience of successful multi-nationality states like Britain and the European Union and unsuccessful ones like Yugoslavia and the Soviet Union, is that these ancient identities that are God given cannot, need not and should not, be wished away simply because we have acquired another identity as "Nigerians" or "Africans."

4. Boundary disputes will be determined by the House of Nationalities in the absence of agreement.
5. Our original position, first put forward in 1991, was that the country should be restructured into eight regions. Our thinking on the issue has moved on to take account of the events that have happened in Nigeria, and in the world at large, in the context of peaceful co-existence between peoples of different races and ethnic groups.

We now propose a Union which is to be a Federation of Constituent Nationalities in which the Nationalities are to be grouped into Regions.

Under these arrangements each Region will itself be a federation. Where a Region consists of a single Nationality, its federating units are to be the contiguous component Sub - Nationalities of the Nationality. Where a Region consists of multiple Nationalities, its federating units are to be the contiguous component Nationalities of the Region. Under these proposals a Nationality or Sub-Nationality cannot form, or be part of, more than one Region.

Any disputes concerning area adjustments under these arrangements are to be resolved by referendum among the populace concerned.

The combined criteria for the creation or recognition of a Region is to be: (i) Adequate Economic Resources (i.e. viability of the area concerned with regard to the scope of Regional powers and functions, which will correspond with the powers and functions of Regions under the 1951 Constitution); and (ii) Adequate Human Resources (i.e. combined population of not less than one million people living within the area concerned).

The combined criteria underlines our belief that neither size nor resources of themselves can be the single determining factor as to which Nationalities can constitute Regions by themselves.

Provision has been made for Nationalities that start out as part of a Region to become Regions in their own right when they are able to satisfy the criteria. However, even a body politic requires time to recuperate and stabilise before undergoing new bouts of surgery. For this reason, we suggest that once the Nationalities have through their freely chosen representatives adopted the new arrangements, no new Region should be created before the expiration of 15 (fifteen) years from the establishment of the new structure.

The overriding principle is that all the Nationalities, regardless of size, are autonomous federating units of equal value to the whole. In this spirit, the divide between the Nationalities that we suggest should stand as Regions in their own right and those that we suggest should come together to form a Region, is driven by nothing more than pragmatism having regard to the tasks and responsibilities expected of a Region.

Each Region as well as each Nationality within a Region will have its own internal Constitution.

The federating Sub-Nationalities of a Mono-Nationality Region are to be designated "Provinces" and will have specified territorial powers which will be greater than those of local government councils but will be less than those of a Region.

The federating Nationalities of a Multi-Nationality Region are to be designated "Associated Territories" and will each have (or they may choose to share with neighboring Nationalities) autonomy in a range of subjects (chieftaincy, cultural affairs, primary education, language development).

On the basis of these principles and criteria, we are proposing that the total number of Regions should be 18 of which 12 will be Mono-Nationality Regions and 6 will be Multi-Nationality Regions as set out in the Schedule to the Constitution. We consider that this arrangement of the nationalities takes account of the known whilst allowing for the as yet unknown dynamics of the nationalities of Nigeria.

The number of Regions that we have proposed is by no means definitive. We recognise that it would be contrary to the spirit of the new arrangements which is based on the consent of the federating units to require nationalities to join together as a Region otherwise than on the basis of their acceptance to each other. For this reason, it is impossible to state with any certainty the number of Regions we will end up with until the consultation process has run its course.

6. This recognises that short of force, the only way the nationalities can be kept together over the longer term is by their will to stay together. President Obasanjo acknowledged this fact in his book "This Animal Called Man" when he said that any future Constitution for Nigeria must contain a self-determination clause. Our expectation is that in this new Nigeria in which all nationalities are equal, no nationality will be given cause to secede. It is nevertheless prudent that provision should be made for this eventuality however remote it may now seem. The peace and stability of the departing nationality, no less than the peace and stability of the rest of the Union, require that a pre-agreed procedure should be followed.

The procedure that we have suggested here is designed to ensure that the initiative has genuine popular support within the nationality concerned. It also allows for a cooling off period of three years between the initial formal political proposal and the referendum in support; this is to allow time for proper reflection and for alternatives and compromises to be considered. We also suggest

a 15 year embargo on secession moves once the nationalities have adopted the new Constitution through their freely chosen representatives.

7. Our quest for unity in the past has been conducted at the expense of our diversity. The new arrangements recognise that this need not and indeed should not, be so. It is not necessary, and neither is it sensible, that we should abandon our God-given identities and heritage in order to be good Nigerians. Under our proposals, citizenship of the Union is complimentary to citizenship of the component nationalities and not a replacement for those natural allegiances. In this way we come into line with countries like Britain, where the citizens proudly celebrate their individual identities as English, Welsh, Scottish and Irish alongside their shared identity as Britons.

The provision that each nationality and sub-nationality may have its own flag follows from the same consideration that our diversity is an asset to be managed rather than a liability to be buried. Again we borrow from the example of the nations of Britain with their distinct English, Welsh, Scottish and Irish flags but who then also share the Union Jack. The requirement that the flags should bear a common Union emblem is to reinforce the message of our unity in diversity.

## **CHAPTER II – Founding Principles**

### **Article 1 – Sovereignty and Self Determination**

8. Our political experience has been that our law makers, all too often, forget or fail to understand the basis of their authority and so we felt that it should be clearly stated that ultimate authority at all times lies with the federating units and that all exercises of that authority by law makers is on behalf of the nationalities and the people.
9. The solemnity of the Constitution is another respect in which the understanding of our law makers has been open to question. It is important to stress that this Constitution is an act of the people and not an ordinary law of Parliament that may be amended by Parliament as it wishes.
10. This is intended to make clear to the coupists and their co-adventurers that no law or decree of any extra-Parliamentary body can be effective to suspend or abrogate this Constitution.
11. It is important that it is made clear that the authority conferred on any person by or through the Constitution is the authority of an agent only and not an absolute authority. The exercise of that authority is, therefore, unconstitutional if it cannot be shown to be for the protection and well being of the people.
12. This restates the point that the authority delegated to the representatives is not exclusive and absolute. It is informed by the need to sterilise the argument that once there is a sitting Parliament the people are powerless to change the Constitution which they made for themselves.
13. It is only by ensuring that every citizen is equally affected by every law that we can ensure that those who make the law will be sensitive in carrying out their duties.
14. This provision is intended to embrace amongst others: (a) soldiers who abuse the trust reposed in them by overthrowing or attempting to overthrow the peoples representatives; (b) individuals who engage in election malpractices; and (c) public officers who engage in corrupt practices.

These are the people who have been principally responsible for reducing the country to its present state. These offences have, historically, not been dealt with the seriousness that they deserve even though they are the worst of crimes being that they serve to destroy the very fabric of the society.

15. As these offences are injuries against each and every citizen, any citizen should have the right to bring the prosecution if the authorities are unwilling or unable to act. The intention is that there should be no time limit on such prosecutions.
16. This reinforces the previous provision and guards against the use of influence to secure pardons and the tendency of violators to pardon each other or to grant immunity to themselves

### **Article 2 – Economic and Political Balance**

17. A happy federation is one in which the federating units are regarded as of equal value and importance to the whole.
18. The key to a successful and sustainable federation is balance. The intention is that the nations should be mutually supportive and this should be the main pre-occupation of the Union Government.

### **Article 3 – Exploitation of Natural and Mineral Resources**

19. Ownership and exploitation of the country's natural resources has been at the root of Nigeria's political problems. These provisions attempt to address the diversity of interests in such resources with a view to ensuring that all legitimate interests (direct and indirect) are catered for.
20. This restores us to the historical position pre the Land Use Decree 1977 where the land belonged to the people and the communities in accordance with their local customs.
21. Here we revert to the basic principle that the owner of land owns all that is on the land and beneath it. Provision is made for the owners of the land to receive appropriate compensation for their good fortune and to participate in the fruits of the exploitation of their natural resources. The identity of the owner of the land is to be determined according to the laws and customs of the people of the land.
22. Since rivers and oceans cannot be privately owned, it makes sense that natural and mineral resources that are contained within our territorial waters should be treated as inter-governmental assets. On this basis, the interested governments are the Union Government and the Government of the Region of which the waters form part. We have suggested that the proceeds should be shared equally between the two.

### **Article 4 – Democracy and Fundamental Rights**

23. If we are to share a common identity as Nigerians we must agree to a common code of minimum values and standards of conduct. If citizens and visitors are to move freely throughout the Union, they need to be sure of the basic rights that are guaranteed to them wherever they may be.

It is for this reason that we have included a statement of fundamental rights in the Union Constitution. The Regions are free to grant more rights in their respective constitutions but may not grant less. These rights are largely as expressed in the 1999 Constitution but with minor amendments and an express obligation on the Governments of the Union to comply with relevant international conventions. A citizen who is injured by any Governments non-compliance with such obligations will be entitled to bring an action against the offending Government.

24. Cultism and cult related violence in Nigeria is fast assuming a dangerous dimension, thus demanding a bold attempt to curb its menace. In view of this, secret cult refers to any organisation where rituals for (member's) entry and exit are symbolically demonstrated in secrecy.

### **Article 5 – Languages**

25. Previous constitutions have provided for Hausa, Igbo and Yoruba to be the official languages alongside English. We consider that this discrimination between the nationalities on the basis of size is no longer acceptable.

Therefore, consistently with the principle of equity between the nationalities, we recommend that English, as a neutral language, be retained as the sole official language of the Union. All Union Government publications are to be made in the English Language.

26. We have made provision for the use of our indigenous languages at the Regional level as we believe that no meaningful development can take place in the long term except on the basis of our heritage.
27. Recognising that it may not be possible for all the indigenous languages to be used as official languages, we have made provision for the protection of minority languages. Dialects of a nationality language do not qualify, or be recognised or treated officially, as separate languages.
28. This is to ensure that the Constitution is accessible to a greater number of the citizens.

### **ARTICLE 6: Citizenship**

29. It is important that there should be a common criteria for citizenship throughout the Union to avoid inconsistencies being exploited. This provision is designed to secure consistency of status between the 1999 Constitution and the proposed Constitution and so these provisions are a reproduction, with minor amendments of the former.

## **CHAPTER III: Relationship Between the Union, the Regions, the Associated Territories and the Provinces**

### **Article 1: Division of Authority**

30. The underlying principle of the federation is that only those matters that the Regions agree should be dealt with at the centre should be dealt with by the Union. This is a departure from the principle of concurrent jurisdiction.
31. The government of a multi-nationality Region stands in the same position in relation to its component Associated Territories as the Union does in relation to the Regions. Thus, as with the Union Government, the principle is that only those things that have to be done at the centre should be done there.
32. We envisage that each Region will have its own Constitution in which the division of responsibilities between the Regional Government and the lower tier governments will be spelt out. This recognises that even within single nationality Regions or Associated Territories, much diversity exists between the sub-nationality groups.

### **Article 2: Judicial and Administrative Cooperation**

33. It is necessary for the proper working of the Union in which the citizens have the right of freedom of movement between Regions that the Regions give recognition and support to each others laws.
34. It is important for this provision to work both ways so as to control any tendency of one tier of government to encroach on the area of another.
35. To keep the size of the government machinery at the centre to a minimum, it is necessary that the Union Government can look to the apparatus of the Regional Governments to give effect to its laws.

### **Article 3: Constitutional Arrangements**

36. We recommend the system of parliamentary government as a more cost effective and inclusive system of government that is better suited to our ethnic and sub ethnic complexity. See our publication: The case for the return to a parliamentary system of government.
37. We consider that the participation of the people in adopting a constitution and in keeping the constitution relevant to their aspirations is as necessary at the local level as it is at the Union level. See also note 41.
38. Balance between the Nationalities in a Multi-Nationality Region is no less important than balance between the Regions and Nationalities at the Union level and so we have provided for equal ownership of these institutions.
39. The Union is based on mutual support and the Union Government's primary responsibility is to secure internal order and the rule of law. We have sought to balance the interests of the Union in internal stability with the autonomy of the Regions by providing that the Union can only intervene in the internal affairs of a Region at the request of the legislature of the Region .
40. It is to be expected that in view of the major political restructuring that this constitution envisages there will be calls for changes as the experiment unfolds. It is important that the constitution should contain a ready mechanism for such demands to be accommodated.

## **CHAPTER IV: Citizen's Participation in Constitutional Amendments and Allied Matters**

41. In our view, the principal weakness of our past constitutional arrangements has been the lack of ownership by the people. The people having never had any real input into the making of the constitutions, they similarly had no facility to amend it when they wished. The facility that is provided in this constitution for the people to initiate amendments to the constitution is borrowed from the constitution of Switzerland.
42. This is a reflection of the principle that matters that principally concern the people as a whole should ultimately be determined by the people as a whole.

## **CHAPTER V: Union Institutions**

### **PART I: General**

#### **ARTICLE I: The Institutions**

43. We have organised the composition of these institutions so that the voice of each Region will be heard which is important since the centre is now owned by all equally.
44. We recommend a Parliamentary system of government. See our publication "The case for the return to a Parliamentary system of government".

### **PART II: The Legislature**

#### **ARTICLE 1: Parliament**

45. Although we have always had two legislative chambers, there has never been any real qualitative difference between the two. Rather than adding value to the representation of the people by being complimentary to each other, the members of the House of Representatives and the Senate have simply duplicated each other. Thus despite two seemingly representative chambers, the people and the nationalities have been left without a voice in the interval between elections. It is for this reason that we recommend that the second Chamber should be restructured as the House of Nationalities to serve as the voice of the nationalities that make up the Union. The House of Representatives will be the voice of the people as individuals. With this arrangement, we will be giving a voice to all the partners in the Union: To the Regions through the Council of Ministers; to the nationalities, through the House of Nationalities and to the individual citizens through the House of Representatives.
46. To ensure accountability it is important that the remuneration of the Union officers should be controlled by the representatives of the Regions.
47. We recommend the shortest practicable term of office to ensure that the representatives remain responsive to their electors. Over time, once a culture of representative politics has set in properly the term of office can always be extended by amendment of the constitution. We can point to the example of senators in the U.S.A. whose term of office is only 2 years.
48. The law of diminishing returns applies to law makers as it does to other aspects of life. We therefore recommend the smallest possible number for the assembly that is consistent with fair

representation. This will encourage quality of selection and deliberations.

49. A longer term of office is appropriate for members of the House of Nationalities who are principally concerned with macro issues as they affect their respective nationalities.
50. In suggesting that the House of Nationalities act as a constitutional council we borrow from the guidance of the Economist in their suggested draft constitution for the EU where they argue that a House of this composition is less likely than a court of law to extend the reach of Union law.
51. As in the US Constitution the President only becomes the Commander in Chief of the Armed Forces and of the militia when they are called into actual service.
52. The sheer size of our country makes it inevitable that we will have a major profile in international relations. The same considerations mean that the job of running the country from an internal perspective is a full time occupation. This dictates the need for the vesting of the duties of Head of State and Chief Executive in separate persons.

The concern with such split responsibilities is often the risk of a power struggle between the personalities. We have sought to address this by strictly defining the President's responsibilities and by ensuring that the President is only indirectly elected and so cannot claim a mandate direct from the people.

### **PART III: THE EXECUTIVE BRANCH**

53. We recommend a collegiate executive based on the Parliamentary system of government to guard against the over-personalisation of the executive power of the Union Government.
54. A short term of office is recommended for the post of President and Vice President of the Board of Governors to facilitate rotation.

### **CHAPTER VI: TASKS AND RESPONSIBILITIES**

55. Foreign policy is the natural preserve of the Union Government. As the constitution represents a new consensus, it is necessary for all pre-existing foreign commitments to be considered anew and confirmed or repudiated. We have recommended a period of three years for the necessary internal deliberations.
56. The main lesson from our recent political history is that the business of the defense of our liberties cannot be left to professional soldiers alone.

When more advanced states like the USA, Britain and Switzerland continue to require significant numbers of their civilian population to share the responsibility of national defence, it is foolhardy and reckless for the people of Nigeria to leave the responsibility entirely to professional soldiers. It is this over-delegation of the task of national defence that leads to the "them and us" attitude and mutual suspicion between the soldiers and the people they are supposed to protect.

We therefore propose that the people must remain involved in the matter of their defense through a popular militia. We consider it important that the size of the professional army to the militia should be kept proportionate at all times as a constitutional check.

57. We recommend that the Union maintain a strong air force and navy as these forces are critical to our defense from external threats whilst not posing the same dangers to our internal civil liberties.
58. Although the armed forces are under the direct control of the Union, our past experience dictates that the Regions should have some say in the use of the forces particularly in peacetime. We therefore propose that the use of the forces in peacetime should be subject to the agreement of the Council of Ministers as the representatives of the Region in the centre.
59. It is necessary that there should be common standards of instruction and training throughout the Union for the armed forces.
60. In our view, the record of policing and internal security in Nigeria has been one of the excessive reliance on force and mutual fear and distrust of the police and the citizens. The police and security services rather than being part of the community, as they should be, are remote and hostile in the nature of an army of occupation.

Further, it cannot be said that this form of police/civilian relationship has succeeded in reducing the level of criminality in the country or the level of detection and apprehension of offenders. Indeed the contrary would appear to be the case.

Our proposal seeks to localise policing and the security services to make them part of the community. A policeman who is of the community he is policing or who, not being a native of the territory, has interacted with the community to such a level as to be able to communicate with the people in their language, is less likely to be trigger happy in the discharge of the duties of his office and is more likely to be able to enlist the support of the community for his work.

61. The basic principle is that the form and content of education should be determined according to local priorities subject only to such minimum standards of education up to the age of 16 as to justify the right to freedom of movement of the citizens throughout the Union.
62. The principle of freedom of movement dictates that there should be common standards of professional education.
63. The capital requirements of technical universities (e.g. medical schools) arguably justify such universities being operated by the Union Government. On the other hand it may be sufficient that one or more Regions combine together for the undertaking.
64. It is sensible that duplication should be avoided where possible and that fruits of research should be shared within the Union.
65. These are matters necessary to the proper co-ordination and management of the Union.
66. Sports has been the one unifying force in our recent political history. Inter- Regional tournaments will help to build understanding and interaction.
67. It is our view that the diversity that we have sought to suppress in the past in the name of unity is the source of our strength and should be celebrated.
68. We cannot run away from the fact that religion has been the source of much unnecessary strife between our people. It is our view that the role of religion in our lives is and should be a matter of

personal choice exercised within the parameters of a democracy. While our preference is that the state should not be mixed with religion, we recognise the right of the people of a state to make their own decisions provided only that it can be shown that it is their decision and not an imposition. For this reason we have stipulated for a referendum of the people to be conducted showing an incontrovertible majority in support of any such proposal.

69. Consistently with the freedom of movement and trade within the Union, it is recommended that there should be common rules on these matters.
70. The state of the Union Review is designed to ensure that we achieve balanced development so that no part of the Union should inadvertently fall behind by reference to the human development index.
71. These are the minimum functions of a Region.
72. It is consistent with the principle of devolution of authority and power within the Union that the Regions should have the right to maintain their own militia and police force.

## **CHAPTER VII: FINANCE**

73. The principle is that the Union Government should look to its own resources as provided by the Constitution to fund its activities. Provision has been made for it to have a share of the revenues from natural resources in addition to the limited taxing powers set out here. With the principal taxing powers resting with the Regions the danger of duplication arises and so it falls to the Union to manage the interaction of the taxes.
74. To facilitate international trade it is desirable that legislation on customs duties should be harmonised.
75. This is the exceptional circumstance in which the Union may requisition funds from one Region for the benefit of other Regions. Such circumstances would include serious floods or droughts.
76. To minimise conflict, express provision has to be made for the funding of the Regional Government in a Multi-Nationality Region since like the Union Government, this unit of governance is owned collectively.
77. While it is to be hoped that after a process of negotiation it will be possible to arrive at a draft constitution which is acceptable to all nationalities in present day Nigeria, we must accept that it may not be possible to achieve unanimity. In those circumstances there can be no alternative to allowing those nationalities that have come to an understanding, if significant enough in number to constitute a viable country, to press ahead.