

# CONSTITUENCY DELIMITATION: A RECURRING DECIMAL

By

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## Introduction

The question of constituency delimitation is so critical in a democracy but we, in Nigeria, seem to shy away from delimiting our constituencies as provided in the various Nigerian Constitutions. Modern democracies are based essentially on indirect representation. Where the representation is not carried out constitutionally and equitably, injustice will be done to the affected group or persons. From the Richards Constitution of 1946 to the 1999 Constitution (as amended)<sup>1</sup>, provisions have been made for constituencies and their delimitation in Nigeria. Despite these ample provisions, the last constituency delimitation in Nigeria was carried out in 1996 by the National Electoral Commission of Nigeria (NECON) under the chairmanship of Chief Sumner Dagogo Jack! This constituency delimitation was used for 1999, 2003, 2007, 2011 and 2015 general elections. As will be shown shortly, successive Constitutions have provided that the last census figures should be used for constituency delimitation. The last census figure was that of 2006 and yet the 2007, 2011 and 2015 general elections were based on the census figures of 1991. Thus there are several unanswered questions in Nigeria relating to constituency delimitation. There is also inaction on the part of government functionaries to carry out their constitutional and statutory responsibilities in this regard.

In this Chapter, we would like to interrogate the importance of representative government, trace the constitutional developments in relation to constituency delimitation, draw attention to the unanswered questions, and use case law to answer some of the question posed above, that is, whether constituency delimitation is a recurring decimal or not.

We will also inquire whether the Independent National Electoral Commission (INEC), National Assembly, the National Population Commission, the National Boundaries Commission, the Office of the Surveyor General of the Federation, the National Bureau of Statistics and the National Identity Management Commission have played their constitutional and statutory roles in this regard.

Lastly, one issue that should be interrogated in this Chapter is whether all the elections conducted by the INEC since 1999 have complied with the provisions of the 1999 Constitution especially in relation to the population quota, number of seats in each House of Assembly and number of State Constituencies.

## The Importance of Representative Government

The word “democracy” literally means “rule by the people”, taken from the Greek terms, *demos* (meaning “people”), and *kratos* (meaning “rule”). It is a political concept

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<sup>1</sup> Hereinafter referred to as “the 1999 Constitution”.

and form of government, where all people are supposed to have equal voices in shaping policy (typically expressed through a vote for representatives). Thus democracy ("rule by the people" when translated from its Greek meaning) is seen as one of the ultimate ideals that modern civilizations strive to create, or preserve. Democracy as a system of governance is supposed to allow extensive **representation and inclusiveness** of as many people and views as possible to feed into the functioning of a fair and just society.<sup>2</sup> Representation can be direct or indirect. In the Greek city states, it was direct representation. However, the Ancient Roman Republic planted the seeds of representative government.

Representative Government has historically denoted a system in which people elect their lawmakers (representatives), who are then held accountable to them for their activity within government. Representative government, or the "republican form," as it is also known, has been widely accepted as the only practicable form of democracy. In America, the acceptance of representative government as a legitimate democratic form has long-standing roots. The argument can be traced back to the English philosopher John Locke (1632–1704), whose *Second Treatise of Government* (1690) was widely read by the founders of America. Locke called for consent to government rather than direct consent to the laws. Thomas Jefferson reflected on this in the Declaration of Independence (1776), writing that governments, rather than laws, derived their "just powers from the consent of the governed."<sup>3</sup>

In Nigeria, since the introduction of elective seats in the 1922 Clifford's Constitution, we have largely practiced indirect representation. In the next part of this Chapter, we will trace the constitutional developments. However, in the 1999 Constitution, there is provision for 3 Senators from each State and 1 from the Federal Capital Territory and 360 Federal Constituencies.<sup>4</sup> How were the three Senatorial Districts and Federal Constituencies delineated?

The State Constituency is a function of Federal Constituency.<sup>5</sup> In other words, there is the Option X3 or X4 applied to the Federal Constituency to arrive at the State Constituency with a proviso that no State House of Assembly shall have less than 24 seats and more than 40 seats.<sup>6</sup> A cursory look at the State Constituencies in Nigeria will show that this has not been observed by the INEC.<sup>7</sup> This has affected the representation of the some states in the Houses of Assembly. In such states, is there equal representation in the House of Assembly? In section 113 of the 1999

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<sup>2</sup> See Shah, Anup. "Democracy." *Global Issues*.

<<http://www.globalissues.org/article/761/democracy>> accessed 5 30 June, 2017.

<sup>3</sup> "Representative Government." *Dictionary of American History*. . *Encyclopedia.com*.

<<http://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/representative-government>> accessed 30 June, 2017

<sup>4</sup> See sections 47-49 of the Constitution

<sup>5</sup> See sections 47, 48, 49, 71 and 75 *ibid*

<sup>6</sup> See sections 91, 112-113 *ibid*

<sup>77</sup> See the State Constituencies in Akwa Ibom, Anambra, Bauchi, Benue, Borno, Delta, Edo, Imo, Jigawa, Kaduna, Katsina, Kogi, Niger, Ogun, Ondo, Osun, Oyo, Rivers and Sokoto States. In all these States, there are shortfalls as shown in the Appendix.

Constitution, it is envisaged that the boundaries of each State Constituency shall be such that the number of inhabitants thereof is as nearly equal to the population quota as is reasonably practicable. What is the population quota for these State Constituencies?<sup>8</sup> Which population quota is INEC using – that of 1963 or 1991 or 2006?

### Constitutional Developments

The Clifford's Constitution of 1922 introduced the first electoral system in Nigeria with the provision of 4 seats comprising 3 for Lagos and 1 for Calabar in the Legislative Council. It is noteworthy that Northern Nigeria was not represented in the Legislative Council as the Governor General retained the power to legislate for the North.<sup>9</sup> The Constitution did not create any electoral body as the Governor retained the powers to make electoral regulations.<sup>10</sup> As soon as the Clifford's Constitution came into force in 1923, the elective principle stimulated an unprecedented political awakening in Lagos. Political parties sprang up overnight and several newspapers commenced publication. The Nigerian National Democratic Party under the leadership of Herbert Macaulay emerged as the most powerful political organisation of the period as the party won all the three seats in Lagos in 1923, 1928 and 1933.<sup>11</sup>

Despite the amalgamation of 1914, the elective principle excluded Northern Nigeria from the legislature of the country whereas European business interests were represented. It was the 1946 Richards Constitution that brought the North and South together.

In our view, the only delimitation at that time was that the representatives must come from Lagos and Calabar. Elections during the period were conducted with the use of rules, regulations and Orders in Council. We will now examine other Constitutions.

a) The Nigeria (Legislative Council) Order in Council, 1946 (The Richards Constitution)

Section 9 of the Richards Constitution provided for 4 elected members – three from Lagos and the other from Calabar as in the 1922 Constitution. Other than the powers given to the Governor to make regulations, there were no other express provisions on elections and constituency delimitation.

b) The Nigeria (Constitution) Order in Council, 1951 (The Macpherson Constitution)

Part 7 of the Constitution provided for Electoral Law.<sup>12</sup> In addition, there was also the Nigeria (Electoral Provisions) Order in Council, 1951. Under these instruments, the Governor made regulations for the election of members including the establishment of

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<sup>8</sup> Section 75 of the 1999 Constitution provides that the latest census held in pursuance of an Act of the National Assembly should be applied in determining the population quota.

<sup>9</sup> Afe Babalola, *Election Law and Practice* (Afe Babalola, 2003) 11-41

<sup>10</sup> See Art XXII of the Nigerian (Legislative Council) Order in Council, 1922.

<sup>11</sup> J Nnamdi Aduba & Sam Oguche, *Key Issues in Nigerian Constitutional Law* (Nigerian Institute of Advanced Legal Studies 2014) 74-75

<sup>12</sup> See also the provisions of section 63 of the Macpherson Constitution that made detailed provisions on electoral matters.

electoral districts. Section 64 of Macpherson Constitution provided for distribution of seats into the respective Houses of Assembly – two elected members each from Northern Region, Eastern Region and Western Region. Section 67 dealt with the central legislative house – the House of Representatives - 136 members.<sup>13</sup> Under this Constitution, there were electoral districts determined in accordance with the relative populations.

c) 1954 Lyttleton Constitution<sup>14</sup>

The electoral regulations made pursuant to the 1946 proclamations were later used (with some minor variations) to conduct elections into the Regional Houses of Assembly created under the 1954 Constitution. The regulations divided the Regions into Electoral Districts or Divisions and each district was allocated a seat. However, in the North, members of the House of Representatives were to be elected through an Electoral College.

A significant development under this Constitution is the composition of the Federal House of Representatives. It was directly elected and the composition was as follows:

- 92 from the North
- 42 from the West
- 42 from the East
- 6 from the Southern Cameroons
- 2 from Lagos

Thus the North had exactly half the number of the total number of elective seats in the Federal House of Representatives.

d) 1960 Independence Constitution

In 1958, the Nigerian (Electoral Provisions) Order in Council for the elections into the House of Representatives was promulgated and electoral regulations made thereunder. The new regulations (1958 Electoral Regulations) repealed the existing Regional Regulations. The Order in Council also created an Electoral Commission and demarcated the country into constituencies.

Section 45 of the 1960 Independence Constitution provided for the establishment of an Electoral Commission for the Federation while section 46 provided for Constituencies. Subsection (1) of section 46 provided that Nigeria shall be divided into as many constituencies as there are members of the House of Representatives in such a manner as the competent authority, acting with the approval of each House of Parliament signified by resolution, may prescribe. Subsection (7) of section 46 defined “the competent authority” as the Electoral Commission of the Federation or such other authority appointed by the Governor General. Section 38 of the 1960 Independence Constitution provided that the House of Representatives shall consist of three hundred and five (305) members.

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<sup>13</sup> Sections 71-73 provided for representative members from the House of Chiefs and House of Assembly from Northern Nigeria, House of Chiefs from the West and House of Assembly from the East.

<sup>14</sup> Babaloba (n 9) 18

Subsections (2) to (6) of section 46 of the Independence Constitution provided that in determining a constituency, the following factors were to be taken into account:

- No constituency shall form part of more than one territory (the three Regions) and the boundaries of each constituency shall be such that the number of inhabitants thereof is as nearly equal to the **population quota** as is reasonably practicable.
- The number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, the distribution of different communities and the boundaries of the territories.
- **Division of Nigeria into constituencies shall be reviewed at intervals of less than eight and not more than ten years.** However a review will be done if more Regions are created or there is an increase in the number of members of the House of Representatives.
- Where boundaries are altered, that alteration shall come into effect upon the next dissolution of Parliament after the alteration has been approved by both Houses of Parliament.
- The number of inhabitants of Nigeria or any part thereof shall be ascertained by reference to the latest census of the population held in pursuance of an Act of Parliament.<sup>15</sup>
- Every constituency established shall return to the House of Representatives one member who shall be directly elected in such manner as may be prescribed by Parliament.

Other than the 1960 Constitution, there was also the Nigeria Electoral (Transitional Provisions) Act, 1961 that validated the 1958 Regulations. In 1962, the Federal Parliament passed the Electoral Act, 1962 which was amended in 1964. The military regime of 1966 suspended the Electoral Act.

e) 1963 Republican Constitution

In the Republican Constitution of 1963, section 50(1) provided for the establishment of the Electoral Commission for Nigeria while section 51 provided for the division of the country into constituencies as there are members of the House of Representatives.<sup>16</sup> Section 43 of the Republican Constitution provided that the House of Representatives shall consist of three hundred and twelve (312) members. The provisions in sections 51 and 52 of the 1963 Republican Constitution are the same as that of sections 46 and 47 of the 1960 Independence Constitution.

f) 1979 Presidential Constitution

Section 43 of the 1979 Constitution provided that there shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives. Section 44 provided that the Senate shall consist of five (5) Senators from each State while section 45 provided that the House of Representatives shall consist of four

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<sup>15</sup> See sections 46 and 47 of the 1960 Constitution.

<sup>16</sup> See also section 52 of the 1963 Constitution

hundred and fifty (450) members. In the 1979 Presidential Constitution, Nigeria was made up of 19 States.<sup>17</sup>

Section 65 of the 1979 Constitution provided that the Federal Electoral Commission (FEDECO) shall divide each State of the Federation into five Senatorial districts for purposes of elections to the Senate and 450 Federal Constituencies for purposes of elections to the House of Representatives under certain conditions in sections 66-70 of the Constitution. Accordingly sections 66-70 of the 1979 Constitution dealt with senatorial districts and federal constituencies; their sizes; their periodic review; time for their alteration; ascertainment of population and time for election to the National Assembly respectively.

Section 69 provided that in determining the size of the senatorial districts and federal constituencies, the number of inhabitants of Nigeria or any part thereof shall be ascertained by reference to the 1963 census of the population of Nigeria or the latest census held in pursuance of an Act of the National Assembly after the coming into force of the provisions of the 1979 Constitution.

At the State Level, section 85 of the 1979 Constitution provided that a House of Assembly of a State shall consist of **three times** the total number of seats which that State has in the House of Representatives and the members of the House of Assembly shall be elected in accordance with the provisions of the 1979 Constitution. More specifically sections 104-111 of the 1979 Constitution dealt with elections to a House of Assembly. Consistent with the provisions of the 1960 and 1963 Constitutions, section 140(1)(c) of the 1979 Constitution created the FEDECO while paragraph 6 of the Third Schedule to the 1979 Constitution dealt with its powers. Section 104 provided that FEDECO shall divide every State in the Federation into such number of State Constituencies as is equal to three times the number of Federal Constituencies within that State under the following conditions:

- The boundaries of each State Constituency shall be such that the number of inhabitants thereof is as nearly equal to the **population quota** as is reasonably practicable.
- **Periodic review of constituencies at intervals of not less than ten years** and FEDECO may alter such constituencies as it may consider desirable.
- FEDECO may also review after any alteration of the boundaries of the State in consequence of a census.
- Where boundaries are altered, that alteration shall come into effect after it has been approved by the House of Assembly and after the current life of that House.

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<sup>17</sup> See section 3 of the 1979 Constitution

#### g) 1989 Constitution

Although inchoate, the 1989 Constitution which was passed on 3 May, 1989<sup>18</sup> had similar provisions.<sup>19</sup> It also established the National Electoral Commission.<sup>20</sup> It was a post-dated Constitution and under it, legislators were to serve on part-time basis. The annulment of the presidential primaries of October 1992 derailed the transition to civil rule in 1992. This was further compounded by the annulment of June 12, 1993 elections.

**There was also the 1995 Draft Abacha Constitution that was neither promulgated nor adopted.**

#### h) 1999 Constitution

Section 47 of the 1999 Constitution provides that there shall be a National Assembly for the Federation which shall consist of a Senate and a House of Representatives. Section 48 provides that the Senate shall consist of three (3) Senators from each State and one (1) from the Federal Capital Territory while section 49 provides the House of Representatives shall consist of three hundred and sixty (360) members representing constituencies of nearly equal population as far as possible provided that no constituency shall fall within more than one State.

The provisions in the 1999 Constitution in relation to Senatorial Districts and Federal Constituencies are essentially the same as that of the 1979 Constitution. Accordingly section 71 provides that the INEC shall divide each State of the Federation into three Senatorial Districts and subject to the provisions of section 49 of the Constitution, INEC shall divide the Federation into 360 Federal Constituencies. Section 72 provides that no Senatorial District or Federal Constituency shall fall within more than one State and the boundaries of each district or constituency shall be as contiguous as possible and be such that the number of inhabitants thereof is as nearly equal to the **population quota** as is reasonably practicable. Other conditions include **periodic review (10 years), review after a census of the population or boundary adjustment or pursuant to an Act of the National Assembly**, approval by the National Assembly and after the current life of the Senate or House of Representatives as the case may be.

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<sup>18</sup> See Decree No. 12 of 1989 and was to come into force on 1 October, 1992.

<sup>19</sup> Section 3 created 21 states; section 45 provided for a Senate and a House of Representatives; section 46 provided that the Senate shall consist of 3 Senators from each State and one from the FCT while section 47 provided that the House of Representatives shall consist of 453 members; sections 69-77 dealt with elections to the National Assembly including constituency delimitation; section 88 created a State of Assembly for each State while section 89 provided that a House of Assembly of a State shall consist of two times the total number of seats which that State has in the House of Representatives and that the members of the House shall be elected on part-time basis in accordance with the provisions of the Constitution; and sections 110-117 provided for elections to a House of Assembly including constituency delimitation.

<sup>20</sup> See section 151(1)(h) and Third Schedule, Part I, paragraph 17. See also the National Electoral Commission Act No. 23 of 1987, later Cap 255, Laws of the Federation of Nigeria 1990. There was also the Electoral Decree of 1977. It is interesting to note that the Electoral Act, No. 8 of 1982, later Cap 105 LFN 1990 referred to Federal Electoral Commission and not National Electoral Commission. However, the INEC Decree, 1998 repealed the NECON Decree of 1987 while the Electoral Act 2001 repealed the Electoral Act 1982.

Section 75 of the 1999 Constitution expressly provides that the number of inhabitants of Nigeria or any part thereof shall be ascertained by reference to the **latest census** held pursuant to an Act of the National Assembly.<sup>21</sup> **In other words, the elections conducted by Prof Maurice Iwu (2007) and Prof Attahiru Jega (2015) ought to have used the 2006 census figures but that of 1991 is the one still in use. We hope that the census figures of 1991 will not be used in 2019 and that the period review will be carried out.**

At the State level, section 91 provides that the State House of Assembly shall consist of **three or four times** the number of seats that State has in the House of Representatives divided in a way to reflect, as far as possible, nearly equal population provided that a House of Assembly of a State **shall consist of not less than 24 and not more than 40 members.**

Section 112 also provides that INEC shall divide every state in the federation into such number of state constituencies as is equal to **three or four times the number of Federal constituencies** within that state under the same conditions as in the 1979 Constitution.<sup>22</sup> In other words, the conditions for the creation of state constituencies are as in the 1979 Constitution. However, before any alteration comes into force, it must be approved by the National Assembly and after 'the current life of the House of Assembly'.

### Electoral Act

Prior to 1982, other than the Electoral Law in the Macpherson Constitution of 1951, there was the Electoral (Transitional Provisions) Act, 1961 which was repealed by the Electoral Act, No. 31 of 1962. Similarly elections were conducted under various rules, directions, regulations and Orders in Council. During the military, there was the Electoral Decree of 1977.<sup>23</sup> The Electoral Act of 5<sup>th</sup> August, 1982 which later became Cap 105 of the Laws of the Federation of Nigeria 1990 was repealed by the Electoral Act 2001. There was an Electoral Act of 2002 and then the Electoral Act of 2006 which was repealed by the Electoral Act, 2010.<sup>24</sup> The Electoral Act 2010 has been amended three times.<sup>25</sup> It should be noted that during the military interregnum, there was several electoral decrees and constitutional amendments.<sup>26</sup>

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<sup>21</sup> See section 69 of the 1979 Constitution that referred specifically to the 1963 census or the latest census

<sup>22</sup> See sections 113-117 of the 1999 Constitution dealing with state constituencies, their sizes, review, alteration, etc are relevant here.

<sup>23</sup> See Decree No. 73 of 1977

<sup>24</sup> Cap E6, LFN 2014

<sup>25</sup> The Electoral Act, 2010 was passed into law on 20 August, 2010, amended on 29 December, 2010; in 2011 and 26 March, 2015.

<sup>26</sup> See the Electoral Decree of 1977 as amended in 1978 and 1979 until the Second Republic enacted the Electoral Act of 1982, Cap 105 LFN, 1990. The 1982 Act was used for the elections of 1983 until the military struck again in December 1983 and suspended political activities. Gen Babangida promulgated the National Electoral Commission (NEC) Decree, 1987 and late General Abacha promulgated the National Electoral Commission of Nigeria (NECON) Decree, 1996 while Gen Abdulsalami promulgated the Independent National Electoral Commission (INEC) Decree, 1998 and repealed the National Electoral Commission of Nigeria Decree. The 1999 Constitution formally established the INEC. A democratically elected government came into being in May 1999.



In terms of constituency delimitation, this is dealt with in the Constitutions and not in the Electoral Acts.

**The history of the electoral commissions/ bodies in Nigeria** can be traced back to the establishment of the first **Electoral Commission of Nigeria (ECN)** which was established to conduct 1959 elections and the post-independence electoral commission in Nigeria, the **Federal Electoral Commission (FEC)**, in 1960. Several electoral bodies have been set up after FEC to conduct elections in Nigeria.<sup>27</sup> Here is a list of all the **electoral commissions in Nigeria**, their active years, chairmen as well as the elections they conducted.

- a) **Electoral Commission of Nigeria (ECN)** (1958-1959) Mr R E Wraith
- b) **Federal Electoral Commission (FEC)** | (1960-1966) | Prof. Eyo Ita Esua (1964-1966) | Elections of 1964 and 1965
- c) **Federal Electoral Commission (FEDECO)** | (Nov. 15 1976-1983) | Michael Ani (1976-1979), Victor Ovie-Whiskey (1980-1983) | Elections of 1979 and 1983
- d) **National Electoral Commission (NEC)** | (1987-1993) | Eme Awa (1987-1989), Humphrey Nwosu (1989-1993), Okon E. Uya (June 1993- Nov. 19 1993) | 1993 Elections
- e) **National Electoral Commission of Nigeria (NECON)** | (1994-1998) | Chief Sumner Dagogo Jack (1994-1998)
- f) **Independent National Electoral Commission (INEC)** | (1998 till date) | Justice Ephraim Akpata (1998- Jan. 2000) – 1999 Elections, Dr Abel Guobadia (2000-2005) – 2003 Elections, Prof Maurice Iwu (2005- April 28 2010) – 2007 Elections, Prof Attahiru Jega (June 2010- October 2015) – 2015 Elections, Prof. Mahmood Yakubu (Oct. 29 2015 till date).

### The Unanswered Questions

It is clear from the constitutional provisions that INEC has powers to delimit constituencies. Nigerians would like to know why the last delimitation exercise was done in 1996 by the defunct National Electoral Commission of Nigerian (NECON). The delimitation exercise was based on the 1991 census and used by INEC for all the elections from 1999 till date whereas section 75 of the 1999 Constitution expressly directed INEC to use the latest census, that is, the one carried out after May 1999. A census was carried out in 2006. Since May 1999, why has INEC not conducted a delimitation exercise? Why is the number of State Constituencies in some states lower than the X3 (or X4) multiplication option enshrined in sections 91 and 112 of the 1999

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<sup>27</sup> Available at <https://oldnaija.wordpress.com/2015/12/16/full-details-about-the-electoral-commissions-in-nigeria/> accessed 5 February, 2017.

Constitution? Why do we have a shortfall of 66 Constituencies in 19 States as shown in the Appendix?

Is the INEC complying with the provisions of sections 113-115 of the 1999 Constitution dealing with size of State Constituencies, population quota, periodic review of State Constituencies, alteration of boundaries and approval by the National Assembly. Such approval cannot come into force until after the current life of the House of Assembly?

Why is INEC not using the census figures of 2006 conducted in a 36-state structure but still using the figures derived from the 1979 Constitution conducted in a 19-state structure? Why is Ondo, Osun and Edo States having 9 Federal Constituencies each and Kaduna and Katsina having 16 and 15 respectively?<sup>28</sup> It is noteworthy that where the number of Federal Constituencies is low, the number of State Constituencies will also be low based on the X3 Option. What is the population quota for these States? Indeed why X3 Option when the Constitution provides for X3 or X4. Why not X4?

We will attempt to answer the unanswered questions subsequently in this Chapter.

#### Is Constituency Delimitation a Legal or Political Question?

In view of the foregoing, we submit that constituency delimitation is not only legal but political if not controversial question and hence the absence of the political will and resources to carry out a constitutional duty.

The current distribution of Senatorial Districts, Federal and State Constituencies, wards and polling stations is attached herewith.<sup>29</sup> As has been stated, the figures used for the delimitation are those conducted by NECON in 1996. How were they arrived at bearing in mind that they were based on the 1979 Constitution and 1991 census? If the population quota of 2006 is used, will this delimitation still be the same bearing in mind that a State House of Assembly shall consist of not less than 24 or more than 40 members? Where a state that ought to have more than 24 members in the House of Assembly has less than the number, can we say that that State House of Assembly is properly constituted? Can we imagine the injustice being done to such states in Nigeria?

In the 1979 Constitution, section 65 provided for 5 Senators from each State at a time that we had 19 states and 450 members in the House of Representatives. However, in the 1999 Constitution, section 71 provides for 3 Senators from each State in a 36-state structure and 360 members in the House of Representatives. In terms of division of states into constituencies, section 104 of the 1979 Constitution provided that FEDECO shall divide every State in the Federation into such number of State constituencies as is equal to three times the number of Federal Constituencies within that state ("The X3 Option"). However section 112 of the 1999 Constitution has a

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<sup>28</sup> See the Appendix

<sup>29</sup> Available at <http://www.nigerianmuse.com/20070414084834zg/sections/important-documents/inec-distribution-of-senatorial-districts-federal-and-state-constituencies-electoral/> accessed 5 February, 2017.

similar provision except that it is not just X3 Option but X3 or X4 Option). Why the reduction in the number of Senators and members of the House of Representatives? In our view, the reduction has resulted in the shortfalls.

For the rest of this paper, we will attempt to rely on case law in addressing the issues arising from constituency delimitation. At the moment, there are several cases in court (from the High Court to the Supreme Court) dealing with the constituency delimitation. How has INEC dealt with them in terms of complying with court orders especially in Ushongo and Oju Local Government Areas of Benue State? We must acknowledge one fact. Creation of states since the military era has had its own complications on constituency delimitation. For instance, Benue State was created out of Benue-Plateau State and Kogi State was created out of Benue and Kwara States. Ebonyi was created out of Enugu and Abia States. These are states that may have complications in terms of boundary adjustments. However, most of the States created in 1991 and 1996 were created from a state and not two states – Abia from Imo, Adamawa from Gongola, Akwa Ibom from Cross River, Bayelsa from Rivers, Delta from Bendel and Edo from Bendel. Such states may not have the complications in terms of boundary adjustments and constituency delimitation.

Two cases will be analysed, namely, *Ushongo Local Government Area v INEC*<sup>30</sup> and *Oju Local Government Area v INEC*<sup>31</sup> to demonstrate the effect of non-compliance with the provisions of sections 112-115 of the 1999 Constitution and why INEC cannot comply with the constitutional provisions.

#### *Ushongo Local Government Area v INEC*

In Ushongo Local Government Area of Benue State, the agitation is that Mbagwa Constituency that existed under 1979 Constitution should be restored. We must bear in mind that under the 1979 Constitution we had 19 states and under the 1999 Constitution we have 36 states. In this case, the thrust of the claim is that in the period 1979 to 1993, two State Constituencies existed in Ushongo Local Government Area, namely, Ushongo and Mbagwa but they now have one constituency. They also contended that the number of Assembly Constituencies in Benue State was lower than the X3 multiplication option enshrined in sections 91 and 112 of the 1999 Constitution. On 12 January, 2005 the Federal High Court, Abuja per Nyako, J granted their reliefs and ordered as follows:

- a) Having regard to the provisions of sections 91 and 112 of the 1999 Constitution, INEC should include the suppressed constituency in Ushongo Local Government Area in the list of Constituencies forwarded to the National Assembly for approval.
- b) INEC should restore the suppressed constituency in Ushongo Local Government Area in order to bring the number of constituencies to two as was the case from 1979 to 1993.

INEC did not comply with the court orders. A restoration would mean the alteration of the boundaries between Ushongo and Mbagwa Constituencies which the National

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<sup>30</sup> Suit No. FHC/ABJ/CS/562/2004, Judgment delivered by BFM Nyako, J on 12 January, 2005.

<sup>31</sup> (2007) 14 NWLR (Pt 1054) 242

Assembly has to approve and which can only come into force after the current life of the House of Assembly. Ushongo Local Government Area approached the Federal High Court sitting in Makurdi for the enforcement of its orders.<sup>32</sup> On 19 November, 2015, the Court granted the relief and further ordered as follows:

- I. Ushongo Local Government Area of Benue State should have two (2) State Constituencies “by whatever name called”.
- II. Elections should be held in each of the two (2) constituencies.

INEC has had challenges complying with the court order. The challenges are analysed hereunder.

### *Oju Local Government Area v INEC*

The questions formulated for the determination of the court in this case are whether the Benue State House of Assembly was properly constituted as envisaged in sections 91 and 112 of the 1999 Constitution and whether the Plaintiff was properly excluded from the restoration that INEC sought to carry out. Arising from the questions, declaratory reliefs and mandatory orders were sought. The constituency involved in this case is Uwokwu. The case failed at the Federal High Court even though it was on all fours with *Ushongo Local Government Area v INEC* but succeeded at the Court of Appeal.

### Constituency Delimitation: A Recurring Decimal

1960 Independence Constitution is the first Constitution that has detailed provisions on constituency limitation. These provisions were replicated in the 1963 Republican Constitution, the 1979 and 1999 Constitutions. At the time that the last constituency delimitation was conducted in Nigeria, the operative Constitution was the 1979 Constitution though parts of it had been suspended by the military that were in power from 1983-1998.

When preparations were made for the General Elections of 1999, consistent with section 75 of the 1999 Constitution, the latest census was that of 1991. Similarly when General Elections were held in 2003, the latest census was that of 1991. However, when General Elections were held in 2007, the latest census was that of 2006 and not 1991. Unfortunately, the elections were conducted using the 1991 census which was no longer the latest. General Elections were held in 2011 and 2015 still using the census of 1991 and not 2006.

It is within the powers of INEC to delimit constituencies as encapsulated in sections 112, 113 and 114 of the 199 Constitution. The Constitution empowers INEC to divide each State of the Federation into constituencies, redraw their physical boundaries and assign as nearly equal population to each one of them as is reasonably practicable. There are four conditions for the review as stated in section 114(1) and (2) of the Constitution, namely, the review must be done at intervals of not less than ten (10) years or by reason of alteration of boundaries of a State or by virtue of a new population census for the country or in pursuance of an Act of the National Assembly.

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<sup>32</sup> See Suit No FHC/MKD/CS/39/2014, Judgment delivered on 19 November, 2015

Section 115 of the 1999 Constitution further provides that when the boundaries of a state are altered, INEC must seek the approval of the National Assembly and such approval cannot take effect until after the current life of the House of Assembly.<sup>33</sup> Other than the last condition, that is, an Act of the National Assembly, all the other three conditions have been present since 2006. It must be conceded that although it is the constitutional responsibility of INEC to conduct constituency delimitation, it relies on other organs of government like the National Assembly, the National Population Commission, the National Boundaries Commission, the Office of the Surveyor General of the Federation, the National Bureau of Statistics and the National Identity Management Commission.

The inherited state constituencies delineated in 1996 are not consistent with the provisions of section 112 of the 1999 Constitution when Option X3 is applied to the number of Federal Constituencies, that is, 360 Federal Constituencies.<sup>34</sup> This account for the shortfall of 66 Constituencies nationwide.

In view of the conditions for the division of a state and creation of a constituency as enshrined in sections 112-115 of the 1999 Constitution, INEC could not comply with the two court orders. Similarly, there are other complications as the parameters used for the delimitation exercise have changed especially with the creation of Kogi State out of Benue and the fact that there was no Ushongo Local Government in 1979. Ushongo was carved out of Kwande Local Government Area in 1992. More fundamentally, the demographics may have changed. What was the population figure in 1979 using the 1963 population census and today, using the 2006 population census?

This is the dilemma faced by INEC. Meanwhile the current Speaker of the House of Assembly in Benue State represents the whole of Ushongo Local Government Area. If the Speaker loses his seat, then the political equation in Benue State will be affected. As if this is not enough, the current Speaker has a Certificate of Return duly issued by INEC and by the provisions of section 68(c) of the Electoral act, 2010 (as amended) once a declaration is made by the Returning Officer, only a tribunal or court in an election petition proceedings can set it aside.

Constitutionally, it is INEC that is mandated to carry out constituency delimitation. However, for INEC to carry out this mandate, it needs the cooperation and assistance of the National Assembly to approve the delimitation; the Office of the Surveyor General of the Federation for the maps of the areas concerned; that of the National Population Commission for the population data of the areas affected; that of the National Boundaries Commission for the management of any disputes that may arise from boundary adjustment and apply technology in the form of Geographic Information System (GIS). INEC must also take into account historical contiguity and community sensitivities. All these cannot be championed by INEC alone. This takes us to the

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<sup>33</sup> See also section 74 for similar provisions in the case of the National Assembly

<sup>34</sup> See section 71 of the 1999 Constitution.

unanswered questions in this paper. The answer was addressed in the Report of the Committee on Electoral Reform (“the Uwais Report”).<sup>35</sup>

### The Recommendation of the Uwais Report

On 26 August, 2007, the late President, His Excellency President Umaru Musa Yar’Adua set up a 27-man Electoral Reform Committee under the Chairmanship of the former Chief Justice of Nigeria, Hon Justice M L Uwais “to examine the entire electoral process with a view to ensuring that we raise the quality and standard of our general elections and thereby deepen our democracy.”

At the end of its deliberations, the Committee produced the Uwais Report. In the Uwais Report, the Committee noted that the task of constituency delimitation is demanding and involves divergent skills and competencies. INEC does not currently have the expertise, political will, competence, staff strength and funds to effectively carry out such a sensitive assignment. However, it is possible to aggregate expertise from existing federal government agencies to carry out such a task. Accordingly, the Committee recommended that a Constituency Delimitation Commission should be established with institutional representation from INEC, National Population Commission, National Boundaries Commission, Office of the Surveyor-General of the Federation, National Bureau of Statistics and National Identity Management Commission.<sup>36</sup> The Commission will handle the task of constituency delimitation and the complaints that arise from it. In this regard, constitutional amendment is imperative. The function of constituency delimitation should be transferred to the new Commission to be established instead of vesting the powers on INEC. It is our view that until this is done, constituency delimitation in Nigeria will be a recurring decimal.

### Concluding Remarks

Constituency delimitation is critical in a representative government. A properly conducted constituency delimitation will ensure an inclusive government. The various cases in court are indicative of the importance of this assignment. Representation is the bedrock of democracy. Constituency delimitation is a critical component of the electoral process and the participation of the citizens in the process. It is not only a constitutional issue but statutory, political, demographic, geographical, historical, cultural and social.

The defunct National Electoral Commission under powers derived from the 1979 Constitution carried out a Constituency Delineation in 1996. Why is INEC, in 2018, still using this ‘inherited’ delineation? It is totally unacceptable that in 2018, INEC is still using the delimitation exercise of 1996 when all the dynamics and fundamentals have changed.

In my view, the problem cannot be solved by the courts alone. It can also not be resolved by INEC alone. It requires the cooperation of INEC, National Assembly, the National Population Commission, the National Boundaries Commission and the Office

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<sup>35</sup> See *Report of the Electoral Reform Committee, Vol 1 Main Report, December 2008.*

<sup>36</sup> See *Uwais Report*, pages 32 and 119.

of the Surveyor General of the Federation. It also requires the support of the National Bureau of Statistics and the National Identity Management Commission.

It is also noteworthy that the National Population Commission is preparing for another census in 2018. Will the census figures be ready before the 2019 election? Even if the figures are ready, will the constituency delimitation be ready? If all these are not done, there will still be the issue of constitutionality of the elections conducted in clear violation of section 75 of the 1999 Constitution.

Where a state that ought to have more Federal Constituencies is denied, when the X3 (or X4) Option is exercised, the state will have less number of members in the State House of Assembly. Similarly, where a state that ought to have more than 24 members in the House of Assembly has just 24 because of the inaction of government functionaries, this amounts to injustice and under-representation.

In view of the fact that all the elections conducted since 2006 were not in substantial compliance with the provisions of sections 75, 91 and 112 of the 1999 Constitution, it can be argued that the elections were unconstitutional. Can we also say that the State Houses of Assembly that have 'suppressed' constituencies are properly constituted?

**INEC Distribution of Senatorial Districts , Federal and State Constituencies, Electoral Wards, Polling States**

S/N	State	No. of LGA	No. of Senatorial Districts	No. of		No. of Wards	No. of Polling Stations
				Federal Consti- tuencies	State Consti tuencies		
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>SW</b>							
<b>1</b>	<b>Ekiti</b>	16	3	6	26	177	2195
<b>2</b>	<b>Lagos</b>	20	3	24	40	245	8465
<b>3</b>	<b>Ogun</b>	20	3	9	26	236	3210
<b>4</b>	<b>Ondo</b>	18	3	9	26	203	3009
<b>5</b>	<b>Osun</b>	30	3	9	26	332	3010
<b>6</b>	<b>Oyo</b>	33	3	14	32	351	4783
	<b>TOTAL SW</b>	137	18	71	176	1544	24672
<b>SE</b>							
<b>7</b>	<b>Abia</b>	17	3	8	24	184	2676
<b>8</b>	<b>Anambra</b>	21	3	11	30	326	4623
<b>9</b>	<b>Ebonyi</b>	13	3	6	24	171	1784
<b>10</b>	<b>Enugu</b>	17	3	8	24	260	2959
<b>11</b>	<b>Imo</b>	27	3	10	27	308	3523
	<b>TOTAL SE</b>	95	15	43	129	1249	15565
<b>SS</b>							
<b>12</b>	<b>AkwaIbom</b>	31	3	10	26	329	2982
<b>13</b>	<b>Bayelsa</b>	8	3	6	24	105	1805
<b>14</b>	<b>CrossRiver</b>	18	3	8	25	193	2283
<b>15</b>	<b>Delta</b>	25	3	10	29	270	3625
<b>16</b>	<b>Edo</b>	18	3	9	24	192	2629
<b>17</b>	<b>Rivers</b>	23	3	12	32	319	4441
	<b>TOTAL SS</b>	123	18	55	160	1408	17765
<b>NW</b>							
<b>18</b>	<b>Jigawa</b>	27	3	11	30	287	3527
<b>19</b>	<b>Kaduna</b>	23	3	16	34	255	5108
<b>20</b>	<b>Kano</b>	44	3	24	40	484	8074



<b>21 Katsina</b>	34	3	15	34	361	4896
<b>22 Kebbi</b>	21	3	8	24	225	2398
<b>23 Sokoto</b>	23	3	11	30	244	3035
<b>24 Zamfara</b>	14	3	7	24	147	2516
<b>TOTAL NW</b>	186	21	92	216	2003	29554

**NE**

<b>25 Adamawa</b>	21	3	8	25	226	2609
<b>26 Bauchi</b>	20	3	12	31	212	4074
<b>27 Borno</b>	27	3	10	28	312	3933
<b>28 Gombe</b>	11	3	6	24	114	2218
<b>29 Taraba</b>	16	3	6	24	168	1911
<b>30 Yobe</b>	17	3	6	24	178	1714
<b>TOTAL NE</b>	112	18	48	156	1210	16459

**TOTAL NC**

<b>31 Benue</b>	23	3	11	29	276	3691
<b>32 Kogi</b>	21	3	9	25	239	2548
<b>33 Kwara</b>	16	3	6	24	193	1872
<b>34 Nassarawa</b>	13	3	5	24	147	1495
<b>35 Niger</b>	25	3	10	27	274	3187
<b>36 Plateau</b>	17	3	8	24	207	2631
<b>TOTAL NC</b>	115	18	49	153	1336	15424

<b>37 Abuja FCT</b>	6	1	2	0	62	562
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**GRAND TOTAL** 774 109 360 990 8812 120001

Available at <http://www.nigerianmuse.com/20070414084834zg/sections/important-documents/inec-distribution-of-senatorial-districts-federal-and-state-constituencies-electoral/> accessed 5 June, 2018.