

# AUS POLITIK UND WISSENSCHAFT

## The 1999 Nigerian Constitution: Accuracy and Acceptability of the Census Results

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### I. Introduction

One of the fundamental problems of post-colonial Nigeria is the accuracy and acceptability of census results. The first national population census in independent Nigeria took place in 1962. It was cancelled after heated exchanges of accusations between the then three regions, each accusing one another of inflating population figures in its area of authority. According to the premier of Eastern Nigeria, the rumpus over the 1962 census arose from the fact that the preliminary results showed that the Eastern and Western regions (comprising the South of Nigeria) had a total population which was a little more than that of the North. Thus when the North, whose figures were the first to be announced over the radio realised this fact, it ordered a supplementary count which resulted in the addition of nine million people to the figures of Northern Nigeria. The North thereafter counter accused the East of inflation of census figures, making special mention of the discovery of villages in Eastern Nigeria.

Another census was hurriedly took place in 1963 so as to produce population figures for use in delimiting the constituencies for the General Elections of 1964. After the close of field enumeration, it took the Census Board over three and a half months to announce the preliminary figures. The delay, according to the Board was due to the fact that the census figures had to undergo a series of exhaustive tests to ensure accuracy and acceptance. Without such thorough checks, the Board argued, the Governments of the Federation and the general public will have little or no confidence in any population figures. That was a true statement, but all the same the figures which were described as 'worse than useless' by the Eastern Nigeria Government showed ridiculous growth rates of 5.65 percent for Northern Nigeria, 4.76 percent for Eastern Nigeria and 7.28 percent for Western Nigeria for the inter-censal period 1953 to 1963.

The results of the 1973 census was much worse because before thorough checks were carried out, the Federal Military Government announced the result. The controversy arose from the fact that the figures announced by General Gowon gave the northern states 64.42 percent of the total population of Nigeria as compared with 53.50 percent for 1963, 55.36 percent for 1952/53 and 57.03 percent for 1931. The 1973 census was cancelled due to the insidious political unrest it created. The third attempt at a census in 1991 was inconclusive and it was rejected by the 1994/1995 Constitutional Conference. The Federal Military Government overturned that rejection, and the result is still in use. It is a well known fact that the main reason why population figures have come to assume such importance in the power politics of Nigeria is that for a very long time, it constituted the basis for the disbursement of the nations revenue. Bala Takaya<sup>1</sup> states that: "If the issue of revenue allocation ignited the fire of conflict among Nigeria' federating units, disputes over population census figures intensified its heat close to a melting point. This is so because, in place of the derivation principle, population size was adopted as the main criterion not only for the revenue sharing exercise but also as the basis for the distribution of virtually all allocable values, roles and federal services. The larger a region' quantum population size, the higher its revenue shares from the DPA (Distributable Pool Account)." <sup>2</sup> The immediate past Chairman of the Senate Committee on Population (Sen Martins-Yellowe) agrees: 'At the root of controversies and credibility crisis that has bedevilled all post-independence attempts at head-count is the political chicanery of major ethnic groups over power and resource control, and over the allocation and distribution of revenue.'<sup>3</sup>

It is therefore important to bear in mind that one of the key issues in the accuracy and acceptability of census results is the function of such results in the allocation of federation revenue. Thus, if the function determines the allocable resources, then the result becomes very important and may ultimately lead to falsification, inaccuracy and unacceptability. A simple solution is to de-emphasize the utility of census result. That will be utopian because people affect significantly the availability and enjoyment of resources. Indeed population is still very important in the inter state revenue allocation criteria<sup>4</sup> and section 162(2) of the 1999 Constitution provides that population shall be one of the criteria to guide the President and the National Assembly in sharing proceeds of the Federation Account.

<sup>1</sup> Takaya, B., The Structure of Conflict in Nigerian Federalism, in: *J. Isawa Eliagwu / R.A. Akindele* (eds.), Foundations of Nigeria's Federalism: 1960-1995, Abuja, National Council of Inter-governmental Relations, 71.

<sup>2</sup> Ibid at pp. 80-81.

<sup>3</sup> Nigeria and the Census Question' (2001) *The Guardian* (Nigerian) Thursday June 14 , p. 7.

<sup>4</sup> See *O. Fajana*, Three-and-a Half Decades of Fiscal Federalism, in: *J. Isawa Eliagwu / R.A. Akindele* (eds.), supra note 1, pp. 105, 118-119. Population has been a significant criteria of revenue allocation system recommended by different Commissions recommended to study the matter: Sir Jeremy Raisman (1958); Okigbo (1981) and National Revenue Mobilisation and Fiscal Commission (1989).

Since population is still important and since accurate and acceptable census has to be carried out to enable proper planning and allocation of resources, it becomes easy to understand the aim of the constitutional provisions in the 1999 constitution to ensure accuracy and acceptability of census results. Whether they actually do so is to be seen after a consideration of the provisions.

This paper critically examines the provisions of the 1999 Constitution of the Federal Republic of Nigeria to ascertain whether they are adequate in ensuring the accuracy and acceptability of census results. The matters considered herein constitute non technical issues that complement the technical issues which ensure a successful census.

## **II. Constitutional Provisions on Population Census**

The 1999 constitution provides for the functions, composition and proceedings of the National Population Commission<sup>5</sup> which is the agency enabled to deal with population matters. It also makes provisions for the acceptability of census results.

### *1. Functions of the National Population Commission*

Paragraph 24 of the third schedule to the Constitution confers the National Population Commission with the following functions:

- (a) undertaking periodical enumeration of population through sample surveys, censuses or otherwise;
- (b) establish and maintain a machinery for continuous and universal registration of births and deaths throughout the federation.
- (c) advising the president on population matters;
- (d) publishing and providing information and data on population for the purpose of facilitating economic and development planning; and
- (e) appointing, training or arranging for the appointment and training of enumerators or other staff of the Commission.

### *2. Composition of the Commission*

Paragraph 23 of the third schedule of the 1999 Constitution provides that the Commission shall consist of 38 members made up of a chairman and one person from each State of the

<sup>5</sup> Established by Section 153 (I) of the 1999 Constitution.

Federation and the Federal Capital Territory Abuja.<sup>6</sup> The chairman and members of the Commission are to be appointed by the President of the Federal Republic of Nigeria after consultation with the Council of State. The appointment has to be confirmed by the Senate.<sup>7</sup> To be qualified to be appointed a Chairman or member of the Commission, Section 156 of the Constitution provides that the person must be qualified to be elected a member of the House of Representatives,<sup>8</sup> must not be disqualified for election as a member of the House of Representatives,<sup>9</sup> and within the preceding ten years has not been removed as a member of certain Federal Executive bodies<sup>10</sup> or as holder of any other office on the ground of misconduct. The eligibility of a person employed in the public service is guaranteed because the Constitution deems the person to have resigned his appointment as from the date of appointment.<sup>11</sup> The term of office for non ex-officio members is five years<sup>12</sup> which is renewable.<sup>13</sup>

The chairman and members of the Commission may be removed from office by the President acting on an address supported by two-thirds majority of the Senate praying that he be so removed for inability to discharge the functions of the office (whether arising from

<sup>6</sup> See also section 154 (I) of the Constitution.

<sup>7</sup> Section 154 (3) *ibid.*

<sup>8</sup> Section 65 of the Constitution provides that such a person must be at least 30 years of age and educated up to at least School Certificate level or its equivalent.

<sup>9</sup> Section 66 of the Constitution provides that a person is disqualified if he has voluntarily acquired the citizenship of another country; he is declared to be a lunatic or of unsound mind under any law in force in any part of Nigeria; he is under sentence of death or sentence of imprisonment or fine for an offence involving dishonesty or fraud or any other sentence; he has within a period of less than 10 years before the date of election been convicted and sentenced for an offence involving dishonesty or found guilty of offence involving dishonesty or found guilty of contravention of the Code of Conduct; he is an undischarged bankrupt under any law in force in any part of the country; he is a person employed in the public service and he has not withdrawn, resigned or retired thirty days before the date of election; he is a member of secret society; he has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an administrative Panel of Inquiry or a Tribunal or he has presented a forged certificate to the Independent National Electoral Commission. These provisions do not apply during the pendency of an appeal lodged against adjudgement of lunacy; declaration of unsound mind, sentence of death or imprisonment or adjudgement of bankruptcy.

<sup>10</sup> The bodies are the Code of Conduct Bureau; Council of State; Federal Character Commission, Federal Civil Service Commission; Federal Judicial Service Commission; Independent National Electoral Commission, National Defence Council; National Police Council; National Security Council; Police Service Commission and Revenue Mobilisation Allocation and Fiscal Commission.

<sup>11</sup> Section 156 (2) of the Constitution. This provisions seems to conflict with the provisions of section 66 (1)f which requires withdrawal resignation or retirement 30 days before an election.

<sup>12</sup> See section 155 (1)c of the Constitution.

<sup>13</sup> See section 156 (3) *ibid.*

infirmity of mind or any other cause) or misconduct.<sup>14</sup> In addition section 157 (2) of the Constitution provides that all members of the Commission shall cease to be members if the President declares a National Census Report as unreliable and the report is rejected. The composition of the Commission has great implications for the proper conduct and success of a census. The National Population Commission that conducted the 1991 census was made up of a chairman and seven commissioners as provided for in the National Population Commission Decree 1989. That Decree practically repealed paragraph 13 of Part 1 of the third schedule to the 1979 Constitution which has the same provisions on composition of the Commission as the 1999 Constitution. The National Census Board of 1972-1975 also had a large membership of 27 members half of which was made up of representatives from each of the then 12 States of Nigeria. The presence of these States representatives in the National Census Board 1972-1995 resulted in a situation where they:

“(...) believed that their main duty was to protect the interest of their state. As a result, instead of working to ensure that the census figures from their state were accurate and reliable, many of them were concerned with working to ensure that their states were not cheated in the census inflation spree that each of them, out of suspicion of the others, appeared convinced would occur”,<sup>15</sup>

These remarks are very much applicable to a commission that is composed in accordance with the 1999 Constitutional provisions. A Population Commission with representation from each state is unworkable. Rather the most effective way to depoliticise census in Nigeria at least to start with is to replace the one member per state provision in the constitution with a much smaller number, representing the major geo-political zones as has been the case since 1988. Alternatively a two tier structure can be introduced to the Commission. The commission will be made up of Board of Commissioners of a maximum of seven but not less than five in addition to a chairman who should be an experienced and respectable retired public officer. An Advisory body made up of representatives of each of the states of the Federation can exist to advise on policy issues.

### 3. *Independence and Proceedings of the Commission*

Section 158 (2) of the Constitution guarantees the independence of the Commission in certain respects. The Commission is not to be subject to the direction and control of any other authority or person:

(a) in appointing, training or arranging for the training of enumerators and other staff of the Commission to assist in the conduct of population census;

<sup>14</sup> Section 157 (1) *ibid.*

<sup>15</sup> See *R.K. Udo*, Population Census in Nigeria: Depoliticization, commissioned paper presented to the Political Bureau 1986, p. 25.

- (b) in deciding whether or not to accept or revise the return of any officer of the Commission concerning the population census in any area or part of the Federation;
- (c) in carrying out the operation of conducting the census; and
- (d) in compiling its report of a national census for publication.

The quorum of a meeting of the Commission is one third of the members.<sup>16</sup> A member is entitled to one vote and the decision of the Commission shall be reached by a majority.<sup>17</sup> The Chairman is endowed with a casting and deliberative vote.<sup>18</sup> The issue of quorum is critical as it is the basis for the legitimacy of a particular meeting.

#### 4. *Report of a National Population Census*

When the Commission has conducted a census, the provisions of section 213 of the Constitution govern its acceptability. The report shall be delivered to the President by the Chairman of the Commission. The President shall within a period of thirty days thereafter lay copies of the report before the Council of State<sup>19</sup> which shall consider the report and advise the President whether to accept it or reject it. Where the Council advises the President to accept the report, he shall accept same and lay the report on the table of each House of the National Assembly. Where the President has done this, he shall publish it in the Official Gazette of the Federal Government for public information. Where the Council of State advises the President to reject the report upon the ground that the population census contained in the report is inaccurate or that the report is perverse, the President shall reject the report accordingly and no reliance shall be placed on the report whatsoever. It is important to note that none of the Houses of the National Assembly nor any of the State House of Assembly has a role to play in the acceptability of the result. However the Council of State indirectly play a role as Governors are members of the Council. Therefore their acceptance or otherwise of the result will reflect in the decision of the Council of State whether to advise the President to accept or reject the census result. The opinion of members of the Council of State can be shaped by the conduct of the population census. The accuracy of the results obtained thereby will therefore play a pivotal role since this will lead to widespread acceptability of the result and therefore the advise of the Council of State to

<sup>16</sup> Section 159 (1) *ibid.*

<sup>17</sup> Section 159 (2) *ibid.*

<sup>18</sup> Section 159 (3) *ibid.*

<sup>19</sup> The Council of State is made up of the President who shall be Chairman; the Vice President who shall be the deputy Chairman; all former presidents of the Federation; and all former Heads of the Government of the Federation; all former Chief Justices of the Federation; the President of the Senate; the Speaker of the House of Representatives; all Governors of the States of the Federation and the Attorney General of the Federation.

the President to accept the result. A number of pertinent questions arise from the provisions on acceptability outlined above. Why should the National Population Commission submit the census report to the President instead of proceeding to publish it? Why is it the Council of State rather than experts in demography and statistics that should advise the President to accept or reject the census report? How does the census Tribunal report affect the functions of the Council of State? It seems very clear that in order to depoliticise census, the sections of the constitution dealing with the census should be reviewed to give the commission full powers to conduct and release census without reference to the President and the Council of State. This position is strengthened by the rules of Procedure of the Census tribunals which is considered below.

To achieve accuracy in population census, the whole format of the institutional structure of the National Population Commission must be considered. Thus the constitutional provisions which seek to ensure the independence of the operations of the Commission will form only a part of the story. Since the Commissioner whose appointment, tenure of office, proceedings and removal are guaranteed in the constitution are not the persons to go to the field, we must look elsewhere to ascertain whether we have in place enough provisions to ensure that the data on population census obtained is accurate. And it is first to the National Population Commission Act that we turn to.<sup>20</sup>

Some of the provisions of the Act which have not been impliedly repealed by the 1999 Constitution,<sup>21</sup> seek to ensure the accuracy and acceptability of population census. These provisions criminalise certain actions or omissions to act with respect to the census. Firstly section 17 of the Act declares it unlawful for any State Government to debate discuss or deal with or require the State office or any staff of the commission to release to the State Government, population figures (or matters relating thereto) of the State in question without the authority in writing of the Commission. Any person who without such approval (a) communicates or releases any information concerning population figures of a State to the State government or members thereof; or (b) table for discussion at a meeting of the State Government, the population figures of the State; or (c) treats engages in or takes part in debating the population figures of the State at a meeting of the State Government shall be guilty of an offence under this section and liable on conviction to an imprisonment of not less than five years without the option of a fine.

<sup>20</sup> This Act was promulgated as Decree 23 of 1988. It is now Chapter 270 of the laws of the Federal Republic of Nigeria 1990. Hereinafter referred to as the Act.

<sup>21</sup> Section 1 (3) of the 1999 Constitution provides that if any other law is inconsistent with the provisions of the Constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void

Secondly section 18 of the Act imposes a penalty of a fine of ₦ 10,000 (Ten thousand naira) or 3 years imprisonment or both on anybody employed to carry out the commission' mandate and who falsifies returns.

Thirdly section 19 of Act imposes the same punishment on any person who employed to carry out the Commission' mandate makes an unlawful disclosure of information acquired in the course of his activities; or fails to comply with or contravenes any other term or condition of his oath.<sup>22</sup> Anybody who having received unauthorised information discloses same will also be guilty under this section. Section 20 of the Act imposes a penalty on person who is required to furnish information, estimates, returns or particulars under the Act and who fails to do so.<sup>23</sup> The punishment on conviction is five hundred naira (₦ 500) or imprisonment for six months or to both. If after conviction the person continues to flout the requirement to furnish information, estimates or returns or particulars shall be guilty of a further offence. If however the person supplies the information, estimate, return or particulars he and they are false in any material particular, he shall be guilty of an offence if it can be proved he did so knowingly or recklessly.<sup>24</sup>

Fourthly a series of offences are created by section 21 of the Act. If a person presents himself to be counted more than once or misleads the official employed in that regard to count him more than once, or aids, abets, counsels procures any person to be counted more than once, he is guilty of an offence.<sup>25</sup> Any person who during the compilation of any national census or during any enumeration exercise knowingly refuses to present himself for counting or refuses to get his thumb dubbed with indelible ink after such counting or obliterates or attempts to obliterate or remove any indelible ink dubbed on his thumb during the enumeration period is guilty of an offence.<sup>26</sup> If any person at any time before or during the compilation of any national census or during any enumeration exercise causes or procures any other person to leave the place at which the other ordinarily resides for another place with intent that such other person may be counted at the new place or organises or brings about the movement of a group of people for the same purpose, he shall be guilty of an

<sup>22</sup> It is a defence for the person to prove that he did not know and had no reasonable means of knowing that he was required to furnish that information or those estimates, returns or particulars or had other reasonable excuse for such failure.

<sup>23</sup> Section 28 of the Act requires the Chairman and Commissioners to swear to an oath of Allegiance contained in the seventh schedule and an oath of secrecy contained in the Act. Staff of the Commission swear only to an oath of Secrecy.

<sup>24</sup> The penalty is ₦ 1,000 or twelve months imprisonment.

<sup>25</sup> The penalty is a fine of ₦ 10,000 or 3 years imprisonment or both.

<sup>26</sup> The penalty is a fine of ₦ 500 or imprisonment for 6 months or to both such fine and imprisonment.

offence and liable on conviction to a fine of one thousand naira or imprisonment for 12 months or both.

Fifthly, section 22 of the Act provides that any person who wilfully and without lawful authority destroys defaces or mutilates any form of notice or other documents containing information obtained in pursuance of activities of the Commission or the number of the house pasted on the premises for the purpose of the census or other surveys shall be guilty of an offence and liable on conviction to a fine of ₦10,000 or imprisonment for 3 years or both.

Sixthly, section 25 of the Act allows the Commission to enter any premises and make any inquiry for the execution of its mandate.<sup>27</sup>

The criminalisation of certain conduct or omission to act is designed to ensure that accurate census is obtained. As we noted earlier the legitimacy of this exercise has a role to play in the acceptability of the result by the Council of State and the recommendation to the President. Unfortunately conflicts over figures will arise and the acceptability of the census may be in issue. For example the acceptance by the Council of State of the census results does not mean that all controversies over the result is thereby extinguished. Since the Council is required to adopt its decision by a majority, is it permissible for any State perhaps in the minority, or even in the majority to challenge the result in a court of law. Theoretically this is possible, as there is no hindrance to the scope of judicial review in the Constitution. In other words the basis and interpretation of inaccuracy and perverseness which are to be relied on by the Council can be subject of judicial inquiry, and/or review. This is welcome as judicial review remains a veritable tool for ensuring acceptability. For its absence may stifle genuine control. In this regard, section 26A of the Act;<sup>28</sup> establishes Census Tribunals, in designated centres to hear complaints and objections to census results as they relate to specific Local Government Areas or Localities. The Tribunals, which shall consist of a chairman and 2 other members who shall be persons of unquestionable integrity and have not been involved in party politics, shall be appointed by the Chief Justice of the Federation. The Chairman shall be a person who has held office or qualified to hold office of a Judge of a High Court, while one of the other 2 members shall be a legal practitioner who has been so qualified for a period of not less than 5 years while the other person shall not be a legal practitioner. Where any complaint or objection is upheld by the Census Tribunal, the President may order a statistical verification or a recount of the particular area concerned in order to correct the anomaly. Suppose however that the Tribunal rejects any

<sup>27</sup> The punishment on conviction is a fine of ₦ 500 or imprisonment for six months or to both.

<sup>28</sup> Inserted by the National Population Commission (Amendment) Decree 1991. Another amendment, Decree 26 of 1992 inserts a third schedule to the Principal Act. The said schedule contains the rules of procedure to be adopted by the Tribunal.

complaint or objection? Is the matter over or is there an avenue of appeal. An appeal lies to the Court of Appeal and then to the Supreme Court.<sup>29</sup> Our analysis above therefore makes the ouster clause in section 29 of the Act in operative null and void and of no effect. The ouster clause was inserted as a standard clause in legislation made during the military era that did not take kindly to judicial review.

One of the provisions of the Rules of Procedure that has implication for the acceptability of the result is the provision of rule 2 thereof that a complaint to a Census Tribunal shall be presented within six months after the date on which the Census result is released. If the President is required to submit the census result to the Council of State within thirty days of the result being handed over to him by the Chairman of the Commission and there are complaints before the Census Tribunal or the Court of Appeal and the Supreme Court, then there cannot be a result that is to be submitted to the President. A way out of this conflict will be to submit the result to the President with a report of complaint before the Census Tribunals before the submission and thereafter as the complaints are made to enable the decisions of the tribunal to be taken in to consideration. In line with this submission, since no time limit is given to the Commission to submit its result to the President, it our submission that the results be submitted not earlier than the period allowable for complaints to be laid before the tribunal. In this regard it may be important to reduce the time limit in rule 2 to four months.

### **III. Conclusion**

There is no doubt that the accuracy of census results is fundamental for national planning. The acceptability of a result is linked principally to its accuracy. Accuracy in the Nigerian context may be Herculean task; because of the perceived importance of the result. The Constitutional provisions we have examined above seek to ensure independence of the National Population Commission, the accuracy of the results and its acceptability by Council of State and the President. The provisions are generally fair but require amendment. Composition of the Commission and the procedure for the presentation of the result to the President and the Council of State need to be reviewed. Bearing in mind the desperate manner in which communities, local governments and State approach the census issue, it is not far fetched to submit that one of the keys to accuracy and acceptability lies in the staff and operatives of the Commission. Their integrity and honesty cannot be in doubt. In this regard the conditions of service of these people should be very attractive. It is in this way that they can substantially resist the gratification they are sure to receive in the field. The same requirement of honesty and integrity should guide the President in the selection of the Chairman and members of the Commission. They must be of impeccable credentials. That

<sup>29</sup> Rule 44 of the Rules of Procedure *ibid*.

is why the constitution accords the Commission the pride of place amongst sensitive and critical bodies such as the Code of Conduct Bureau, Council of State; Federal Character Commission; Federal Civil Service Commission; Federal Judicial Service Commission; Independent National Electoral Commission, the National Economic Council, etc. This is one of the areas that the President should not bow to political considerations. The survival of civil democratic rule demands no less.