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FEDERALISM AND FEDERATIONS

Introduction

A number of countries in Africa have federal or federal-type constitutions, for example Ethiopia (1991), South Africa (1994), Nigeria (1999, re-establishing earlier federal constitutions), the Democratic Republic of Congo (2006), the Sudan (2005); Kenya (2010); South Sudan (2011), and Somalia (2012). Only in the cases of Nigeria, Ethiopia and Somalia does the word 'Federal' form part of the country's official name, as in the 'Federal Democratic Republic of Ethiopia'. The constitutions of South Africa, Kenya and the Democratic Republic of Congo (DRC) contain all the elements of a federation but avoid using the word 'federal'.

The structures underlying these countries' federal-type arrangements are largely similar. They are all centralised federations as the central government plays a strong role in regulating and controlling sub-national governments (SNGs), referred to as either states in Nigeria, regions in Ethiopia, provinces in South Africa, or counties in Kenya.

Objectives of federal political systems

Federal systems in Africa have four objectives:



To nurture peace-making and state-building in fragile states. The aim is to unify countries or to settle conflicts by accommodating minorities (often ethnic) and marginalised groups through an inclusive system of government. These were the primary motives in the cases of Nigeria, Ethiopia, South Africa, DRC, Sudan, South Sudan, and Somalia.



To curb the abuse of powers by centralised governments, often concentrated in the hands of authoritarian presidents, by devolving some powers away from the centre in favour of subnational governments (SNGs). This objective featured prominently in Kenya and South Africa.



To enhance development by creating closer ties between government and the people to ensure that development projects reflect regional and local preferences, and resources are spread more equitably across the country, a key issue in Kenya.



To facilitate democracy, enabling communities to have a more direct say in matters of regional or local concern.

Structures of a federation

To give effect to these goals, a federation is a government system comprised of two or more levels of government, where states (also called regions, provinces or counties) govern themselves on specified matters (self-rule), and govern together with the federal government on other matters (shared rule).

Self-Rule

One aspect of a federation is that subnational government exercises some measure of autonomy. This is secured by the following features:

Establishment of at least two levels of government

The constitution must establish at least two levels of government – federal and state – each directly elected by and accountable to their electorate. The number of states vary considerably: 47 counties in Kenya, 36 states in Nigeria, 10 regions in Ethiopia, and 9 provinces in South Africa. Of vital importance is the criteria by which state boundaries are drawn. As a principal aim is establishing peace through accommodating diversity in terms of ethnicity, language, culture and religion, three different approaches to the drawing of boundaries are followed:

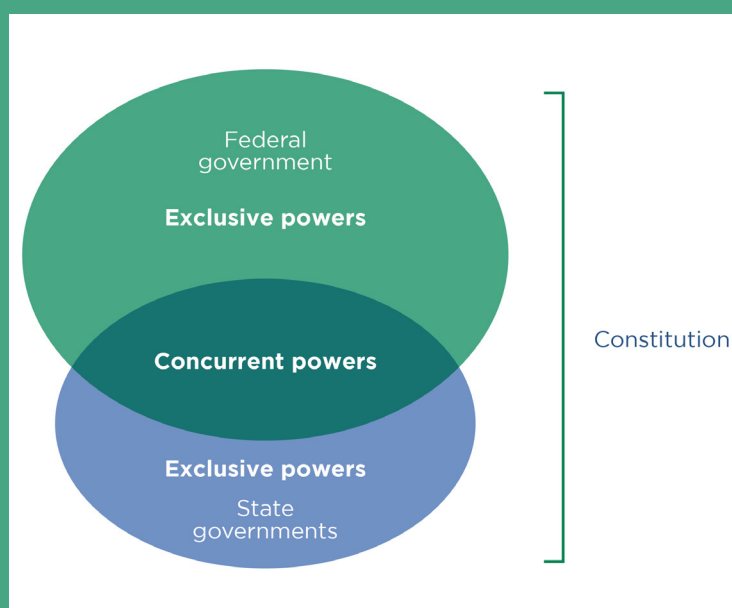
1. the explicit ethnic recognition, as in Ethiopia;
2. the splitting of large ethnic groups into smaller territorial ethnic units, as in Nigeria, the DRC, and Kenya; or
3. using soft ethnic boundaries – accommodating ethnic groups but not making it the main criterion, as in South Africa.

In South Africa, Nigeria, the DRC and Ethiopia, a third level of government is recognised in their respective constitutions – local government.

The division of powers between the centre and the states / provinces

The central element of a federation is the division of powers over policy areas (or functions) between the centre and the states. There are three main approaches:

1. The first is to divide policy areas neatly between the federal government and the states, each level of government having exclusive power over the policy areas allocated to them.
2. The second is to have a large measure of concurrent and overlapping powers over the same specified policy area. In Nigeria, Kenya and South Africa, there are both exclusive national and subnational powers as well as concurrent powers shared by the two levels of government.
3. In the third approach, each level of government has both exclusive and concurrent powers.



Federal governments undertake a number of functions, including those that:



relate to the nation as a whole (foreign affairs, defence, currency);



require uniform regulation across the nation, such as internal trade, commercial transactions.



States perform functions that address their specific needs and that are thus more appropriately and efficiently performed at this level. Examples are education and health.

Where both levels of government have an interest in a particular service, such as education, it is typically made a concurrent function.

Taxing powers and the division of revenue

In African federations, revenue is raised mainly by the centre for distribution to all levels of government and then divided among states to ensure that public services are more or less equal throughout the country. Subnational governments are often given limited taxing powers which are insufficient to fund their activities, thus making them reliant on transfers from the centre.

Shared Rule

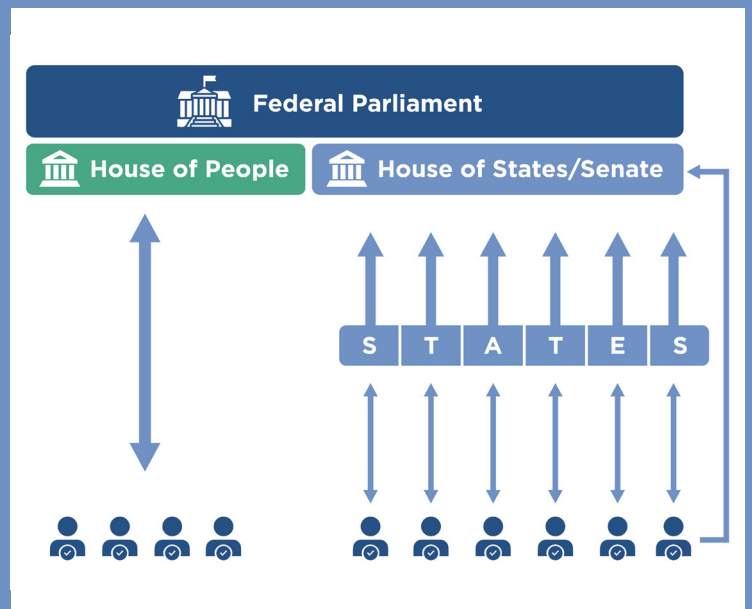
The second, but equally important part of a federation is shared rule. States not only govern their own areas, but also participate in the making of some federal decisions.

Participation of states in the federal or national parliament through a second house

By participating in the national legislative process through representation in a second house of the federal or national parliament, states can influence federal policy and legislation. This may either be confined to matters affecting only them, or that have broader impact. If federal laws are to bind the regions, it's reasonable that they have a say in its formulation. Nigeria, South Africa, and Kenya have established second houses that represent the subnational units. Representatives of the subnational units can be directly elected or elected/appointed by the states/regions/provinces.

Inclusive federal executive and administration

In various ways the Presidency, the cabinet and the federal administration should in its composition reflect a country's diversity. Nigeria's constitution requires, for example, that the federal administration must mirror that country's 'federal character' by employing persons from all its states.

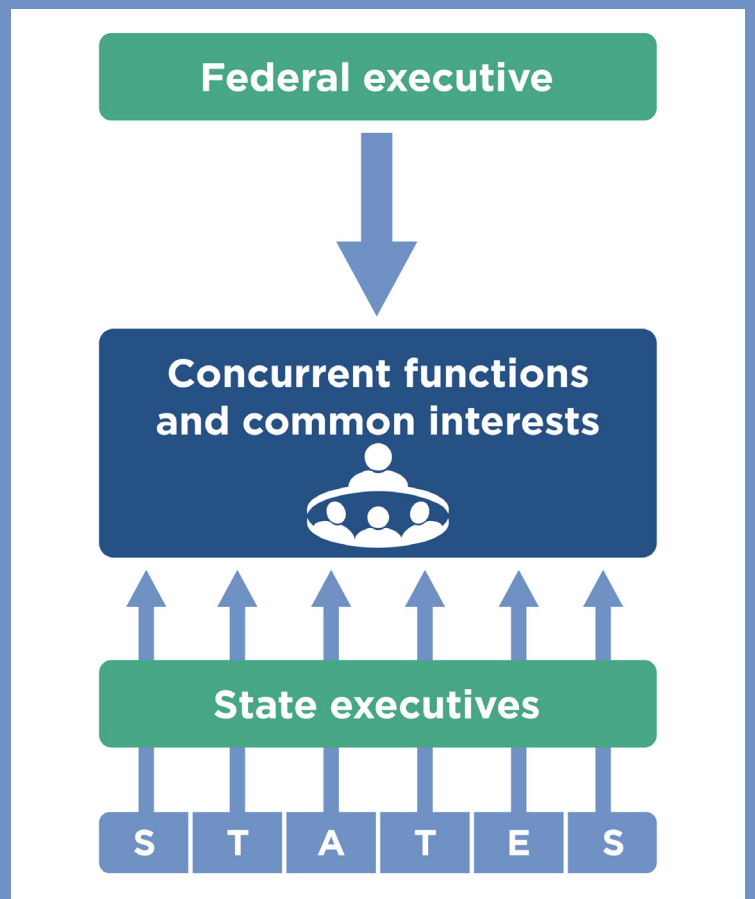


A cooperative system of intergovernmental relations

In intergovernmental relations between executives of the centre and the states, the aim is often to encourage cooperation on matters of common interest. This objective thus limits self-rule of both the federal and subnational governments because it compels them to consult on matters that may affect the other level of government. For details, see Fact Sheet # 8.

A supreme constitution enforced by an independent judiciary

A federation is founded on a supreme constitution that cannot unilaterally be amended by either the federal government or the states, whether collectively or individually. It thus protects the division of powers and the other elements of federalism. A supreme constitution is only as good as its enforcement, and this requires an independent court that can review legislation and decisions of the executive against the constitution, and can invalidate such legislation or decisions where there is conflict. Examples of such courts are the Supreme Courts of Nigeria and Kenya, and the Constitutional Court in South Africa.



Federal practice

Whatever a constitution may dictate, a country becomes a federation in practice only when:

- States actually exercise autonomously legislative and executive powers;
- States have sufficient revenue to exercise their allocated powers;
- The institutions of shared rule function and represent states and their people effectively;
- Intergovernmental relations are based on open bargaining and cooperation is a reality; and
- The courts are independent and are able and willing to enforce a supreme constitution.