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96

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TOPIC:

**NIGERIA: WHAT
MANNER OF
FEDERATION IS THIS?**

By

Professor Edward Oyelowo Oyewo

56

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519

NIGERIA: WHAT MANNER OF FEDERATION IS THIS?

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on Wednesday 20th March 2019

By

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Preamble

Let me start by giving glory to God Almighty, who has been with me from the beginning of my academic career, and made it possible for me to stand before you today, to pay my debt to this Great Institution of Learning that elevated me to the exalted position of a Professor of Law, by giving this Inaugural Lecture today.

Introduction

The 1999 Constitution (as amended) expressly states that "Nigeria shall be a Federation consisting of States and Federal Capital Territory".¹ It is, therefore, not in dispute that one of the

¹ Section 2(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereinafter "1999 Constitution"). See *A-G., Federation v. A-G., Lagos* (2013) LPELR-20974(SC)- Section 2(2) of the 1999 Constitution (As Amended) in 2010 provides that: "2. Nigeria

most enduring constitutional features of Nigeria is the federal system of government, however, the question has always been whether Nigeria is a federation in the true sense of the application of federalism principles and practices?²

From the earliest time in my academic career, the Nigerian federation engaged my attention, resulting into several published works on various aspects of the subject: "The Legislative Powers of the National Assembly: The Exclusive and Concurrent Lists" *Democracy Beyond the Third Republic*, (ed.) L.A. Umezulike (1993), Chapter 3, 33-47; *Federalism Implication of the Urban and Regional Planning Act, a Review of Nigerian Planning Law*, (ed) AA Utuama, pp. 26 – 35; *The Lingering Bakassi Boundary Crisis: The Way Forward, Contemporary Issues on Boundaries and Governance in Nigeria* (ed) RT Akinyele, (Friedrich Ebert Stiftung, 2005); *The Metamorphosis of the Local Government System of Administration, Current Themes in Nigerian Law*, (ed) Yemi Akinseye-George, pp. 119-139; "The Oversight Functions of the National Assembly under the 1999 Constitution" (2004) 1 Nig. J. Leg (*Nigerian Journal of Legislation*) 111-123. Coupled with opportunities to serve at the national level in constitutional and law reforms initiatives, as a Consultant to the House of Representative Committee on Review of the 1999 Constitution under the Jonathan Administration, Consultant to the Nigeria Institute of Legislative Studies, and Consultant to the Nigerian Law Reform Commission.

Interestingly, the contemporary issues relating to the Nigerian Federation now straddle centre stage of our national discussion. Fortuitously, in two recent works (*Federalism and Restructuring of Nigeria: Back to the Future, Nigerian Journal of Contemporary Law* Vol. 19:1, 2018; and *Constitutional Law*

shall be a Federation consisting of States and a Federal Capital Territory." The defining feature of Federalism is recognition of the separateness and independence of each Government that makes up the Federation. In true Federalism powers within the country are shared among two tiers of Governments.

Niki Tobí JSC in *FRN v. Anache* (2004) 14 WRN 1-90

of Nigeria, 2nd Editions 2019 (Wolters Kluwer) my research delved deeper into the centrifugal forces generated by the unresolved fundamental issues of the federation. Undoubtedly, the progression of disgruntlement within the federation in the form of, "National Questions" debate, call for the convocation of Sovereign National Conference of ethnic nationalities within the federation, agitations for "True Federalism" practice, ethnic separatist/secession militancy, and most recently call for restructuring of the federation by most of the ethnic nationalities within the federation, all portend serious implications for the future of the Nigerian federation.³ Hence, the topic of my Inaugural Lecture: "Nigeria: What Manner of Federation is this?"

The interrogation of the topic will be presented, hereinafter, in three Parts. Part I - Fundamentals of Nigerian federation, elucidates on the Plural State, Conceptual Foundation, Evolution (Devolution) of Nigerian into a Federation, and nature of the Nigerian State/Federation. Part II – A Federation under Pressure, interrogates the constitutional/political practices of federalism and the National Questions Dilemma, together with the various issues thrown up, before identifying the counter forces of philosophies and narratives aimed at addressing the aforementioned issues. Part III – Quo Vadis? Delves into Which way forward for the Nigerian Federation, before proffering Recommendations and Conclusion on the subject. The methodology of this presentation derives mainly from primary and secondary sources of materials, such as the Constitution, legislation and subordinate legislation, official gazette and Reports, case law reports, scholarly writings and other publications, buttressed with empirical data, maps, charts, among others, to ensure the originality and authenticity of the reasoning, thesis and reform proposals, that we hope will not only contribute to knowledge on the subject but will actually help to resolve a lot of the problems and issues associated with the Nigerian Federation.

³ Oyelowo Oyewo, *Federalism and Restructuring of Nigeria: Back to the Future, Nigerian Journal of Contemporary Law*, Vol. 19:1, 2018, pp. 98-103

PART I

1.0. The Fundamentals of the Nigerian Federation

The fundamental feature of the country as a plural state informed the choice of the principle of federalism in its governance, the adoption of federalism principle leading to the evolution (devolution) of the Nigerian federation, and the nature of the federal-state relationship, will be the focus in this section.

1.1. Plural State

The Nigerian federation is a plural society with multi-linguistic, multi-cultural, multi-ethnic, multi-religious, multi-socio-economic and historical attributes. The plural nature of the Nigerian State made the choice of federalism a natural one in seeking to promote unity in diversity, and this is further manifested in the diversity of its human and natural resources endowment and the wealth of the State in its sources of revenue.

On 1 January 1914, the British colonial administration merged the Protectorate of Northern Nigeria with the Colony and Protectorate of Southern Nigeria to form the Colony and Protectorate of Nigeria. However, until the advent of the British colonial rule there existed at different historical times various sovereign domains/states known as kingdoms, empires, emirates and communities, made up of different native tribes and ethnic groups on the Nigerian territory.⁴ These included: the Oyo Empire that ruled over most of the southwestern part of the territory populated by the Yoruba people; the Hausa-

⁴ See Taslim Olawale Elias, *Africa and the Development of International Law*, (Leiden, the Netherlands: Sijthoff) 18 (1972) 18; Christian N. Okeke, International Law in the Nigerian Legal System, *California Western International Law Journal*, Vol. 27, [1997], 311 at 324 – 'Ample scholarly historical evidence exists to support the view that some kingdoms and states of what later became Nigeria had their own well-organized political systems and Governments prior to nineteenth century colonial period. Their organs of government and the mechanisms for their maintenance, including military apparatus, were in place and operative.'

Fulani Emirates, the Sokoto Caliphate and the Kanem Bornu Empire that ruled over most of the Northern territory populated by the Hausa-Fulani and Kanuri people and several minority ethnic groupings (the Tiv, Igala, Nupe, Idoma, Jukun, Birom, among other tribes and ethnic groups of the middle belt in northern Nigeria); the Ibo communities of Eastern Nigeria; and the Binin Kingdom, the Itsekiri, Urhobo, Kalabari, Ijaw, Efik, Ibibio domains/communities of the Niger-Delta Area in the south-south territory. Indeed, many of the tribes and ethnic groupings occupied territories during precolonial era and well after the 1884 Berlin Conference and the partition of Africa by the European powers that split these native tribes and ethnic groupings within the Nigerian territory and the boundaries of neighbouring countries, such as Cameroun, Chad, Niger, and Benin Republic.⁵

⁵ *Cameroun v. Nigeria* International Court of Justice (ICJ) judgment (Land and Maritime Boundary between Cameroon and Nigeria: Equatorial Guinea Intervening) at: <www.icj-cij.org/doc/lect/files/94/7453.pdf> The dispute between the Parties as regards their land boundary falls within an historical framework marked initially, in the nineteenth and early twentieth centuries, by the actions of the European Powers with a view to the partitioning of Africa, followed by changes in the status of the relevant territories under the League of Nations mandate system, then the United Nations trusteeships, and finally by the territories' accession to independence. This history is reflected in a number of conventions and treaties, diplomatic exchanges, certain administrative instruments, maps of the period and various documents (at 31).

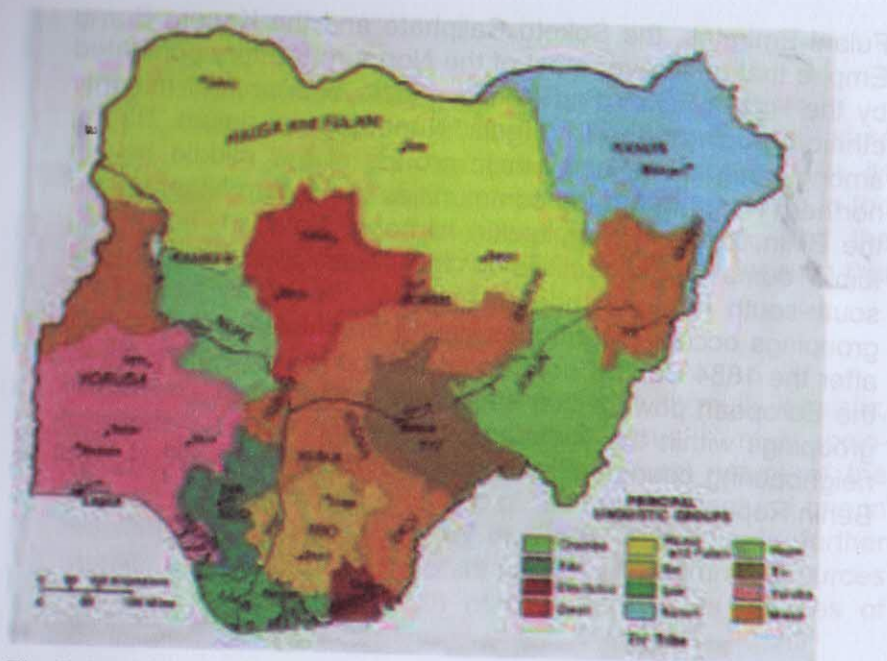


Fig. 1: Ethnic Groups in Nigeria
Source: Researchgate



Fig. 2: Natural Resources in Nigeria
Source: Researchgate

Fig. 1 depicts the diversity of the ethnic groupings constituents and their predominant areas: Hausa/Fulani and Kanuri in Northern Nigeria; Yoruba in the Southwest; Ibo in the Southeast; Nupe, Tiv, Igala, Gwari, Junkun in the North-central; Ijaws, Efik, Ibibio, and Edo in the South-south; with some mixed ethnic groups spread across the whole federation. Fig. 2 depicts the natural resources in Nigeria and the richness and diversity of natural resources in every part of the Nigerian Federation. The act of colonial amalgamation begot the Nigerian State into which the various tribal and ethnic groupings were subsumed. Interestingly, the resources of the territory became that of the Colonial Administration, and till date that of the federal government. These twin colonial acts of conquest by the subjugation of the ethnic groupings and appropriation of natural resources within the federation have become volcanic magma that can erupt into chaos if not properly channelled or neutralised.

1.2. Conceptual Foundation

In dealing with the conceptual foundation, it must be stated that our topic dictates that we proceed from the conceptual abstraction to the pragmatic, as our primary focus is on the Nigerian Federation. First to be addressed is the concept of federation. Our starting point will be what the 1999 Constitution defines the federation to be, as noted by our courts. In *Attorney General of Lagos State v. Attorney General of the Federation*⁶, the apex court⁷ adopted the definition of federation in section 318(1) of the Constitution to mean the Federal Republic of Nigeria. But earlier in *Attorney General of the Federation v. Attorney General of Lagos State*⁸, Muhammad JSC, elaborated on the concept thus: "A Federation is a collectivism of States fused into one nation

⁶ (2014) LPELR-22701 (SC) per Kekere-Ekun JSC pp. 129-130. See also *AG Kano State v. AG. Federation* (2007) 3 SC 59; *A-G., Federation v. A.-G., Imo State* (1983) 4 NCLR 178

⁷ Rotimi T. Suberu, The Supreme Court and federalism in Nigeria, *The Journal of Modern African Studies*, Volume 46, Issue 3. 2008, pp. 451-485

⁸ (2013) LPELR-20974(SC) per I.T. Muhammad pp. 96-103

(federation) with each state maintaining its selected name specially and independence of its constitutional organs. Ideally, each state should be independent of the other and of the Federal Government." His Lordship then referred to section 2(2) of the 1999 Constitution which provides that "Nigeria shall be a federation consisting of States and a Federal Capital. The federation thus constitutes the governmental, institutional and structural technique for achieving the implementation of federalism principle, as the federal systems is composed of a federal (national, central) government and constituent unit governments that are known as States (formerly Regions) in Nigeria, and by a variety of names in various countries." Section 3(1)-(6) detail the structural architecture of Nigerian federation as consisting of one Federal government, 36 States, and 768 Local Government Areas and six (6) Area Councils of the Federal Capital Territory, totalling 774. The Nigerian federation is one of the twenty (20) federal states globally that have adopted the federalism principle as part of the fundamental constitutional framework for the governance of their sovereign states.⁹

One can posit from the above that, a federation exists on the application of the federalism principle. So, the second concept to be dealt with is federalism, which will be contextualised within the Nigerian federation. It must be noted that much of what exists in the literature on federalism seem to take root in the work of the classical federalist scholar, K.C. Wheare, with much of the literature being rooted in political science.¹⁰

⁹ In today's world, of the 193 Member States of the United Nations, there are over 20 federal states across all continents, with a total of 2 billion people, about 40 per cent of the world's population. See Pipa Norris, *Driving Democracy: Do Power Sharing Institutions Work?* (New York/Cambridge, Cambridge University Press, 2008), 157-185. Currently there are only three established federal political systems among the 54 states in Africa: Nigeria, Ethiopia and South Africa. ¹⁰ Dele Olowu, *The Literature on Nigerian Federalism: A Critical Appraisal*, *Publius: The Journal of Federalism*, Volume 21, Issue 4, 1991, pp. 155-171; Adiele E. Afigbo, *Background to Nigerian Federalism: Federal Features in the Colonial State* *Publius: The Journal of Federalism*, Volume 21, Issue 4, 1991, pp. 1-11; The Journal of Federalism, Volume 21, Issue 4, 1991, pp. 13-29; Ladipo Adamolekun; John Kincaid, *The Federal Solution: Assessment and Prognosis for Nigeria and Africa*, *Publius: The Journal of Federalism*, Volume 21, Issue 4, 1991, pp. 173-188; Jonas Isawa Elaigwu, *Federalism and National Leadership in Nigeria*, *Publius: The Journal of Federalism*, Volume 21, Issue 4, 1991, pp. 125-144

Wheare defined the federal principle as the method of dividing governmental power so that the central government and the component governments are each within a sphere coordinate and independent.¹¹ B.O. Nwabueze also defined federalism as:

an arrangement whereby powers within a multi-national country are shared between a federal or central authority and a number of regionalised governments in such a way that each unit including the central authority exists as a government separately and independently from the others, operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of affairs and with an authority in some matters exclusive of all others.¹²

Essentially, the main characteristics of a federal state, deducible from these scholarly writings, are:

1. the supremacy of the constitution defining the rules of the federative relationship and providing legal guarantees for all parties involved;
2. the clear demarcation of powers between the federal government and the member-constituent states guaranteeing a certain degree of sovereignty for the latter (principle of non-centralisation);
3. bargaining and arbitration mechanism for resolving constitutional conflicts;

¹¹ KC Wheare, *Federal Government* (London and New York, Oxford University Press, 4th edn, 1963). p. 15. See John O. Kalu and Dov Bing, "Implication of Federalism in 'Federal' Related Political Institutions: A Conceptual Analysis", *Perspectives on Federalism*, Vol. 8, issue 3, 2016, pp. 45-68

¹² Ben O. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution* (London, Sweet and Maxwell, 1983), 1-22. (hereafter "Federalism in Nigeria").

4. a bicameral parliamentary system ensuring direct representation of the constituent states at the federal level; and
5. decentralised government, i.e. the regional governments' share of power in a federation is relatively larger as compared to that of regional governments in unitary states.¹³

Chapter I of the 1999 Constitution (as amended) clearly contains provisions on the main characteristics of a federal state, for the Federal Republic of Nigeria to be classified as a federation constitutionally, however, the application of the federalism principle in its governance and governmental practices is questionable.

The federal principle means, at the minimum, the method of dividing powers (constitutionally and in practice) so that the general and regional governments, within a sphere, coordinate, establish a common general government in which to form a polity, wherein constituent units both govern themselves and share a common constitutional government of the whole.¹⁴ It has been observed that, for Nigeria and some other federations, federalism has been used as a means to unify separate people for important but limited purposes without disrupting their primary ties to the individual politics that constitute the basic units of the federation, especially as in such cases, the federal government is limited in its scope and powers, functioning through the constituent governments which retain their plenary autonomy and, to a substantial degree, is dependent on them. Federalism has to do with the need of the people and politics to unite for common purposes

¹³ Klaus von Beyme, "Federalism" in C.D. Kernig (ed.), *Marxism, Communism and the Western Society: A Comparative Encyclopaedia* (New York; Herder & Herder, 1972), pp. 314-18, also see K.C. Wheare, *Federal Government* (New York; Oxford University Press, 1963), 4th edn., pp. 153-157

¹⁴ Daniel J. Elazar, "Federalism" in David L. Sills (ed.), *International Encyclopaedia of Social Sciences*, Vol. 5, (Macmillan; 1968), pp. 353-65; Preston King, *Federalism and Federations* (Baltimore; John Hopkins University Press, 1982), pp. 19-21.

yet remain separate to preserve their respective ethnic, socio-cultural, linguistic, and historical integrity and identities.¹⁵

Two broad perspectives have been identified in conceptualising federalism:¹⁶ the sociological and constitutional/legal perspectives.¹⁷ On the one hand, the sociological viewpoint sees federalism as an institutionalised political cooperation and collective coexistence that emanates from the desire of a people to form a union without necessarily losing their identity. In essence, this perspective views federalism as a function of society—a product of the interaction of socio-cultural and political factors. Thus, the essence of federalism¹⁸ lies in the society and not the institutional or constitutional structure. On the other hand, the legal/constitutional viewpoint conceptualises federalism as a form of governmental structure and institutionalised framework of power sharing that provides the framework for interaction among governments. It also protects the rights of citizens and minorities. Federalism is therefore viewed as a property of the constitution, although it has also been noted that, federal systems "are a function of not only constitutions, but also of governments, and fundamentally of societies".¹⁹ The constitution thus becomes an essential requirement of federal governance such that it "can be symbolically important in fostering unity or discord within the country".²⁰

¹⁵ John O. Kalu and Dov Bing, "Implication of Federalism in 'Federal' Related Political Institutions: A Conceptual Analysis", *Perspectives on Federalism*, Vol. 8, issue 3, 2016, pp. 45-68

¹⁶ E. Okpanachi & A. Garba, *Federalism and Constitutional Change in Nigeria, Federal Governance: A graduate Journal, Forum of Federations: The Global Network on Federalism*, Vol. 7. No. 1, 2010, pp. 1-14

¹⁷ Brooks, D. *Canadian Democracy: An Introduction*. Toronto: McClelland Inc. 1993, p. 136

¹⁸ Livingston, W. *Federalism and Constitutional Change*, Oxford: Clarendon Press, 1956, p. 1-2

¹⁹ Blindenbacher, R. & Watt, R. 2003, "Federalism in A Changing World: Conceptual Framework for the Conference" in *Federalism in A Changing World: Learning From Each Other*, eds. R. Blindenbacher & A. Koller, Montreal: McGill- Queens University Press.

²⁰ Anderson, G. *Federalism: An Introduction*, Ontario: Oxford University Press, 2008, p.55

The Nigerian federation has always been viewed from a constitutional/legal conception. Indeed, at the inception of the adoption of federal principles in Nigeria, Sir Arthur Richards, after whom the 1946 Colonial Constitution that became the watershed of federalism in Nigeria was named, made it public that the constitutional proposal sought to address three major aims, namely: 1) To promote unity of the country; 2) To provide adequately within this unity for the diverse elements which made up the country; and 3) To secure greater participation by Africans in the discussion of their own affairs.²¹ Federalism has since independence been considered as a viable tool to accommodate the diversity of the Nigerian nation and to appease and tame centrifugal forces, to the extent that an attempt to reconfigure it into a unitary system of government by General Aguiyi Ironsi, precipitated into the overthrow of that regime by a counter-coup.²²

The adoption and adaptation of federal principles by a state do not automatically translate it into a good example of a federation. In differentiating federalism from federation, an author viewed, federalism as the political philosophy of diversity in unity, and federation as the established institutional structure to attain or promote this form of unity. The connection between the two is not hard to establish and King points out that federation is governed by purpose; acting upon federalism and helping to shape and reshape both its

²¹ Olu Awofeso, *Constitutional Development in Nigeria: Historical and Political Analysis* (2014, MacGrace Publishers, Lagos) pp. 83-93 at 83

²² Oyelowo Oyewo, *Constitutional Law of Nigeria*, 2nd Editions 2019 (Wolters Kluwer), pp. 28-29. - "For a brief period in 1966, the federal structure of the Republic was abolished and replaced with a unitary as the Federation was restyled 'Republic of Nigeria' instead of 'Federal Republic of Nigeria'. The regions became a group of provinces. This attempt at unification led to a counter-coup and the fall of the Major General Aguiyi-Ironsi's regime, on 28 July 1966 and was succeeded by Lt. Col. Yakubu Gowon as Head of State on 1 August 1966. The Gowon regime promulgated the Constitution (Suspension and Modification) (No. 9) Decree No. 59 of 1966, which restored Nigeria back to a Federal Republic and the federal structure of Nigeria to what it was on 17 January 1966."

expression and its goals. Practically, while a constitutional distribution of authority, responsibilities, and finances among the tiers of government is a fundamental feature common to all federations, there is enormous variation with regard to the constitutional form, scope and operation of the distribution of powers. There is no single ideal model; rather there are many practical variations.²³ It has been observed that the historical pressures affecting the allocation of functions to one order of government or another have varied. There is also considerable variation in the degree of centralisation and non-centralisation (or decentralisation) of powers and in the degree of intergovernmental cooperation or competition among governments within federations.²⁴

The Supreme Court of Nigeria seemed to have had the above line of reasoning in mind in *FRN v. Anache*,²⁵ where Niki Tobi (JSC) rationalised about the Nigerian Federation thus:

A federal government will mean what the constitution writers say it means, and this can be procured within the four walls of the constitution and the four walls only. Therefore, a general definition of federalism or federal government may not be the answer to the peculiar provisions of a nation's constitution which is the *fons et origo* of its legal system. Ideal federalism or true federalism is different from specific or individual federal constitutions of nations, which may not be able to achieve the utopia of that ideal federalism or true federalism but which in their own sphere are called federal constitutions. I think Nigeria falls into the latter category or group. It will, therefore, be wrong to propagate theories based on ideal or true federalism in a nation's Constitution, which does not admit such utopia . . . The point I am struggling to make is that there is no universal agreement as to what is federalism or a federal government.

²³ Preston King, *Federalism and Federation*, (London, 1982), pp. 1-160, at 19-22

²⁴ *ibid*

²⁵ *Federal Republic of Nigeria v. Alhaji Mika Anache & Ors*, (2004) 14 WRN 1-90

While conceding to his Lordship that "there is no universal agreement as to what is federalism or a federal government", we must disagree with his Lordship that the constitution alone determines whether or not a state is a federation or adapts federal principles in its governance. We present a counterpoise to Justice Niki Tobi's observation, in the much earlier poignant observations of KC Wheare that, "the Nigerian constitution of 1960 purports to establish a federation and it clearly bears many characteristics of a federal system ... but it is too soon yet to judge whether, in practice, Nigeria will provide an example of a federal government or not".²⁶ The same can be observed of the subsequent constitutions of 1963 and 1979, and the extant 1999 Constitution (as amended). More so, as there are different types of federalism in practice,²⁷ the relevant types to Nigeria being "Dual Federalism", "Cooperative Federalism", "Competitive Federalism", "Confrontational Federalism", "Divisive Federalism", and "Centralist Federalism", that have characterised the practice of federalism in Nigeria.²⁸ Albeit, it has been argued that many of the distinctions among types of federalism rest on an array of controversial ideas about the nature of the 'state' and the deeply contested concept of 'sovereignty'.

One must also acknowledge the fact that the political scientist theory of federalism interrogates the adaptation of the principle

beyond the mere constitutional framework and structure by assessing the practice and pragmatic application of the federal principles²⁹ as indicated by Wheare's observation about the 1960 Constitution. One cannot but agree the more with Elazar that the essence of federalism is not to be found in a particular set of constitutions or institutions but in the institutionalisation of particular relationships among the participants in political life, consequently, federalism is a phenomenon that provides many options for the organisation of political authority and power: as long as the proper relations are created, a wide variety of structures can be created and developed that are consistent with the federal principle. The federalism features of the 1999 Constitution of unity in diversity, peaceful coexistence, internal and external security, promotion of national integration, political stability, even economic development, elimination of problem of uneven distribution of resources and income, and progressive national development, among others,³⁰ have all been called to question in the face of centralist arrogation of power, weakened unit states, internal and external insecurity, existential challenges of abject and vicious circle of poverty, systemic corruption, infrastructure deficit, crisis of leadership and followership, structural imbalances, resource exploitation, underdevelopment and retrogression.³¹ Clearly, the optimistic Federalist at the dawn

²⁶ Wheare Kenneth C., *Federal government*, (1963, Oxford University Press, London) p. 29

²⁷ Types of federalism that have been identified include: "Dual Federalism"; "Cooperative Federalism"; "Creative Federalism"; "Competitive federalism"; "Confrontational federalism"; "Divisive federalism"; and "Consociational federalism", inter alia. See Arend Lijphart "Constitutional Design for Divided Societies" (2014) 15 *Journal of Democracy* 96, 97; Brendan O'Leary, "Debating Consociational Politics: Normative and Explanatory Arguments" in Sidney John and Roderick Noel (eds), *From Power Sharing to Democracy: Post-Conflict Institutions in Ethnically Divided Societies* (Montreal, McGill-Queen's University Press, 2005), 3.

²⁸ Nicholas Aroney, *Types of Federalism*, Max Planck Encyclopedia of Comparative Constitutional Law, 2016, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2783119

²⁹ Ladipo Adamolekun; John Kincaid, *The Federal Solution: Assessment and Prognosis for Nigeria and Africa*, Publius: The Journal of Federalism, Volume 21, Issue 4, 1991, pp. 173-188; Jonas Isawa Elaigwu, *Federalism and National Leadership in Nigeria*, Publius: The Journal of Federalism, Volume 21, Issue 4, 1991, pp. 125-144; Stephen Tierney, *Federalism in a Unitary State: A Paradox too Far?* *Journal of Regional & Federal Studies* Volume 19, 2009 - Issue 2: *The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?* pp. 237-253

³⁰ See sections 2, 3, 13, 14 & 15 of the 1999 Constitution

³¹ Ladipo Adamolekun; John Kincaid, *The Federal Solution: Assessment and Prognosis for Nigeria and Africa*, Publius: The Journal of Federalism, Volume 21, Issue 4, 1991, pp. 173-188; Jonas Isawa Elaigwu, *Federalism and National Leadership in Nigeria*, Publius: The Journal of Federalism, Volume 21, Issue 4, 1991, pp. 125-144; Stephen Tierney, *Federalism in a Unitary State: A Paradox too Far?* *Journal of Regional & Federal Studies* Volume 19, 2009 - Issue 2:

of the Nigerian Federation in 1960, like Wheare, Obafemi Awolowo,³² *inter alia*, will wonder, what manner of federation is this?

1.3. Evolution (Devolution) of Nigeria into Federation

As earlier observed, on 1 January 1914, the British colonial administration merged the Protectorate of Northern Nigeria with the Colony and Protectorate of Southern Nigeria to form the Colony and Protectorate of Nigeria, but, until the advent of the British colonial rule there existed at different historical times various sovereign domains/states known as kingdoms, empires, emirates and communities, made up of different native tribes and ethnic groups on the Nigerian territory.³³ However, on 22 March 1945, proposals for a new constitution for Nigeria came before the Legislative Council under the Governorship of Sir Arthur Richards, and the *Constitution Order-in-Council, 1946*³⁴ followed upon the proposal of the Legislative Council. The 1946 Constitution for the first time introduced regions into Nigeria, as the Protectorate of Nigeria was divided into two, the Northern Province or Region, and the Southern Province or Region (which was further subdivided into the Western and Eastern Regions), which effectively divided Nigeria into three Regions, Northern, Western and

The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions? pp. 237-253

³² Obafemi Awolowo, *The Path to Nigerian Freedom* (1947).

³³ See Taslim Olawale Elias, *Africa and the Development of International Law*, (Leiden, the Netherlands: Sijthoff) 18 (1972) 18; Christian N. Okeke, *International Law in the Nigerian Legal System, California Western International Law Journal*, Vol. 27, [1997], 311 at 324 – 'Ample scholarly historical evidence exists to support the view that some kingdoms and states of what later became Nigeria had their own well-organised political systems and Governments prior to the nineteenth century colonial period. Their organs of government and the mechanisms for their maintenance, including military apparatus, were in place and operative.'

³⁴ *Nigeria (Protectorate & Cameroon) Order in Council 1946; Constitutional Instruments, 1946 otherwise known as the Richard's Constitution, Nigeria Letters Patent, 1946; Nigeria (Legislative Council) Order in Council, 1946, Part IV, established House of Assembly of each of the three Provinces of Northern, Western and Eastern Nigeria.*

Eastern Regions. This process of devolution will ultimately result in the formation of the thirty-six States of the Nigerian Federation that exists today under the 1999 Constitution.

The 1951 Constitution ushered in increased regional autonomy of three regions, for which the Constitution of 1946 provided, with larger and more representative legislatures with wider powers both in the region and central governments, as they were given a greater measure of self-governance in the quasi-federation of 1951 which became the constituent units of a Nigerian federation in the last colonial Constitution of 1954.³⁵ The 1951 Constitution, which established a quasi-federal structure, was replaced by the 1954 Lyttleton Constitution. The latter established a full-fledged Federal Structure.³⁶ Although, unlike the 1951 Constitution which ensured wide consultations with the people and their representatives, the 1954 Constitution was the product of a Constitutional Conference which was organised along party lines. By 1957 the Western and Eastern regions became formally self-governing under the parliamentary system and similar status was acquired by the Northern Region in 1959. The preparation of a new federal constitution for an independent Nigeria was carried out at

³⁵ Sir U. Udoma, *History and the Law of the Constitution of Nigeria*, (*supra*) chs 5, 100, 102–107. Commenting on the negative impact of regionalisation on Nigeria, he stated at p. 95 thus: Regionalisation marked the dawn of a new era. It was the beginning of the British government's disengagement with the problem of effectualising the unity of Nigeria through the system of unitarism as an established form of government, which would have made Nigeria too powerful in the continent of Africa. As was rightly claimed, it was most certainly the beginning of the grand design by the British government of laying well the foundation for the eventual Balkanisation of Nigeria into three separate fragments, opposed to one another as countries, and each of which was to be the *depositum* of a predominantly major ethnic group with minority groups within as their satellites.

³⁶ The Nigeria (Constitution) Order in Council, 1951, the Nigeria (Constitution) (Amendment) Order in Council, 1953, the Nigeria (Constitution) (Amendment) (No. 2) Order in Council, 1953. Nigeria (Constitution) Order in Council, 1954. By 1946, regionalism was introduced, and by 1954, a full-fledged federation of three regions had evolved, laying the foundation for the practice of federalism in Nigeria

conferences in 1957 and 1958, and Nigerian delegates were selected to represent each region and to reflect various shades of opinion. The delegation was led by Tafawa Balewa of the Northern Peoples' Congress (NPC) and included party leaders Obafemi Awolowo of the Action Group (AG), Nnamdi Azikiwe of the National Council of Nigerian Citizens formerly known as the National Council of Nigeria and the Cameroons (NCNC), and Ahmadu Bello of the NPC; they were also the premiers of the Western, Eastern, and Northern regions, respectively.

Minority fears of domination by the three powerful regions were expressed at the 1953 Constitutional Conference. It was at the 1957 Constitutional Conference that the British Colonial Secretary appointed a Commission headed by Henry Willinks to ascertain the facts of the fears of minorities in Nigeria and proposing means to allay those fears; to advise what safeguards should be included for this purpose in the Constitution; and as a last resort to the agitation, make a case for the creation of States. The report submitted is known as the 1958 Willinks Commission Report,³⁷ that made recommendations, *inter alia*, for the guarantee of fundamental rights in the independence constitution, so as to safeguard and allay the fears of Minorities. Albeit, the Nigerian Constitutional Conference that resumed in London from 29 September to 27 October 1958, resulted into internal self-government in 1959, the Independence Constitution of 1960, and the granting of independence on 1 October 1960. Upon independence, each of the three regions, Eastern, Western and Northern Regions, were granted a separate constitution distinct from the Constitution of the Federation. The regions had their legislative houses, while a Governor and Premier constituted ceremonial

³⁷ Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means to Allay-ing Them – Willink Commission Report Conclusions and Recommendations, pp. 98–108 – 7/1/1958 Digitized by The Adaka Boro Centre: <http://www.adakaboro.org>, in collaboration with the Community Defence Law Foundation (CDLF) at: http://eie.ng/wp-content/uploads/2014/03/TheWillinkCommissionReport_conc_recom_lt.pdf.

and executive heads of their executive arm of government. The federal government had its own parliament consisting of a Senate and a House of Representatives, and a Governor General and Prime Minister constituted the ceremonial and executive heads of the executive arm of government. On 1 October 1963, the monarchy was abolished and replaced by a republican constitution, thereby bringing about the cessation of the Queen as the Sovereign of Nigeria, and her functions devolved upon the offices of the President of the Republic and the Governors of the Regions. The executive authority within the federation became vested in the President at the Centre and the Governors in the Regions. The Constitution of the Federation was superior to that of the Regions in legal status as it exerted supremacy over those of the Regions. A fourth region, the Mid-West Region was created out of the Western Region in 1962 by the Federal Government and was subjected to a referendum on 13 July 1963.

The constitutional and political crisis rocking the nation seems to have prepared the ground for a military coup d'état that took place on 15 January 1966 and aborted the Constitution of the Federal Republic of Nigeria of 1963. On 17th January, 1966, the Major General Aguiyi-Ironsi led Military Junta succeeded in taking over power from the Council of Ministers and the Constitution (Suspension and Modification) Decree No. 1 of 1966 was promulgated to give constitutional and legal effect to the coup, as Federal Laws became known as Decrees when signed by the Head of State and that of the Regions, Edicts, when signed by the Governor. For a brief period in 1966, the federal structure of the Republic was abolished and replaced with a unitary government,³⁸ and the Federation was restyled 'Republic of Nigeria' instead of 'Federal Republic of Nigeria'. The regions became a group of provinces. This attempt at unification led to a counter-coup and the fall of the Major General Aguiyi-Ironsi's regime, on 28 July 1966 and was succeeded by Lt. Col. Yakubu Gowon as Head of State on 1

³⁸ Constitution (Suspension and Modification) Decree Nos 5 and 34 of 1966 abrogated the federal structure. See A. Ojo, *Constitutional Law and Military Rule in Nigeria* (Ibadan: Evans, 1987), 16–32.

August 1966. The Gowon regime promulgated the Constitution (Suspension and Modification) (No. 9) Decree No. 59 of 1966, which restored Nigeria back to a Federal Republic and the federal structure of Nigeria to what it was on 17 January 1966. The Gowon Regime in the face of threats of secession by the Governor of Eastern Nigeria Region promulgated the States (Creation and Transitional Provisions) Decree No. 14 of 1967 creating a twelve States structure within the Nigerian Federation to replace the four regions structure, thereby transforming Nigeria from a federation of regions into a federation of states'.

Thus, Nigeria witnessed "reconfiguration" of its federation in 1967, with three out of the four regions being divided into newer entities and all first-level subdivisions being renamed as states to produce a total of twelve (12) States. The 1967 State creation exercise was undertaken as a political manoeuvre when in the heat of the crisis that later degenerated into civil war, the Gowon Administration announced the splitting of the pre-existing four regions into twelve States. More importantly, the unilateral decision of the Military Government to reconfigure the Federation was neither preceded by a constitutional conference, referendum, plebiscite, or public approval.³⁹ Unfortunately, the Military Governor of Eastern Nigeria, which became Central Eastern State, on 30 May 1967, proceeded to declare secession from Nigeria to create Biafra as a new country, subsequent to which the Nigerian

³⁹ "Basically, Military federalism in Nigeria has two conspicuous features. The first is the military superstructure: military regime in which institutions of popular participation are suspended. The military hierarchy of authority, the head of the federal military government appoints all state governors who are responsible to him. This negates the traditional principle of federalism and fits the Apter's model of mobilization with chain of command and minimum accountability to the people." See Osabiya Babatunde, "Nigeria's Federalism, Unity and Development" (2015) 15 *Global Journal of Management and Business Research* 1, 2, quoting I Elaigwu, "The Military and State Building: Federal - State Relations in Nigeria 'Military Federalism'" in AB Akinyemi, PD Cole and Walter I. Ofonagoro (eds) (Lagos, Nigerian Institute of International Affairs, 1979), 1.

Civil War ensued and was fought to the bitter end between the forces of the Federal Military Government and the Biafran forces, until the war came to an end, after the Biafran forces surrendered, in January 1970. The 1960 and 1963 Constitutions were more sensitive to a balanced power sharing arrangement than subsequent constitutions. For example, the legislative power of the central government on electricity and gas was not to the total exclusion of the regional governments.⁴⁰ It allowed the regional governments to develop their electricity and power generation, transmission and supply within their regions, alongside that of the central government's electricity system.

Five years after the end of the Civil War, General Yakubu Gowon's Administration was overthrown in a bloodless coup d'état on 29 July 1975, due to his reneging on the promise to the country to conduct elections and hand over government in 1976, and Brigadier Murtala Mohammed, succeeded him, as Head of State. The new regime further devolved Nigeria into nineteen States from twelve States pursuant to the States (Creation and Transitional Provisions) Decree of 1976. The regime also set up elaborate machinery to fulfil its promise to the country to hand over to a civilian government of 1 October

⁴⁰ Sections 2, 3 and 5 of the 1960 and 1963 Constitutions established the federations, the federating regions and the Constitutions of each region. Moreover, great autonomy was given to the various regions to give room for functional division of powers between the central and regional governments. See Sections 123 and 129 of the 1960 and 1963 Constitution respectively, in relation to sections 59 and 56 of the Northern Nigeria Constitution and Eastern Nigeria Constitution of 1963 respectively. The 1960 Constitution in Section 73 (1963 Constitution section 79) provided thus: "(1) Parliament may make laws for Nigeria or any part thereof with respect to electricity or gas: Provided that nothing in this subsection shall preclude the legislature of a Region from making laws for that Region with respect to those matters. (2) The powers conferred on Parliament by this section shall not include powers - (a) to prohibit or restrict the establishment by or on behalf of the Government of a Region of an agency for the manufacture, distribution or supply of electricity or gas in that Region; or (b) to regulate the production, distribution or supply of electricity or gas by the Government of a Region or any such agency. (3) In this section "gas" does not include natural gas."

1979.⁴¹ However, the Head of State, General Murtala Mohammed was assassinated in an unsuccessful coup d'etat led by one Lt. Col. Dimka, and General Olusegun Obasanjo became the Head of State. General Obasanjo's Administration handed over power to a civilian government based on the Constitution of the Federal Republic of Nigeria 1979 that was promulgated into force by Decree. They imported into the 1979 Constitution some Military Decrees that could not be repealed by the legislature except through very special majority constitutional amendment procedure, such Decrees included the Land Use Decree, 1978; and the National Youth Service Decree.

The 1979 Constitution was innovative in many respects: as it introduced a presidential system of government, a departure from the parliamentary system of government that had been practiced in Nigeria since the colonial era; a three-tier federal structure that consisted of the federal, states, and local governments;⁴² and an expressly stated supreme constitution, *inter alia*. The Constitution also introduced the Fundamental Objectives and Directive Principles of State Policy, as non-justiciable provisions of the constitution. However, the politicians failed to realise the potentials of good governance, development and progress offered by the 1979 Constitution as the political actors abused most of the powers conferred on them⁴³ until the Constitution was overthrown by another Military coup d'etat on 31 December 1983, led by General Muhammadu Buhari, who became the Head of State.

Nigeria experience yet another military coup on 27 August 1985, overthrowing the General Buhari Administration and,

⁴¹ The Regime established a Constitution Drafting Committee (CDC) (which produced a draft Constitution) and the Constituent Assembly (which deliberated upon the draft Constitution which was drafted by the CDC). See Decree No. 50 of 1977.

⁴² Oyelowo Oyewo, *The Metamorphosis of the Local Government System of Administration, Current Themes in Nigerian Law*, (ed) Yemi Akinseye-George, pp. 119-139

⁴³ B.O. Nwabueze, *Nigeria's Presidential Constitution 1979-1983* (London: Longman, 1984), chs

replacing it with the Major General Ibrahim Badamosi Babangida led Administration, who took on the title of President, instead of Head of State. The Babangida Administration embarked on an elaborate transition to civil rule programme, that involved the making of a new Constitution in 1989, which suffered a stillbirth due to the annulment of the June 12, 1993 Presidential Election, widely believed to have been won by Chief Mashood Kashimawo Abiola of the Social Democratic Party (SDP) (the other party was the National Republican Convention (NRC) being the only elections contested on a de jure and de facto two-party system). The annulment generated widespread protests, nationwide civil unrest, and the termination of the General Babangida Regime for an Interim National Government (ING), headed by Chief Ernest Shonekan. The military took over government again from the ING, and installed General Sani Abacha, as the Head of State by Decree No. 1 of 1994, which also led to the setting up of a Constitutional Conference to once again produce a new constitution for the country. The draft 1995 Constitution was never promulgated into force until the death of General Sani Abacha in 1998. General Abdulsalam Abubakar who took over from General Abacha established a fifteen-person Panel to review the 1979 Constitution and recommend necessary amendments for the promulgation of a new constitution into force. The 1999 Constitution was promulgated into force by the Decree No of 1999 and the military disengaged from power and governance on 29 May 1999.

The autocratic approach to state creation under successive military regimes reconfigured and skewed Nigeria's federation into what it is now. The Murtala Muhammed Military Administration reconfigured the 12 States federal structure created by the Gowon Regime, into 19 States in 1976. The Babangida Military Administration further embarked on state creation exercises by increasing the number of states to 21 in 1987 and 30 in 1991 (together with the creation of a Federal Capital Territory in Abuja). The Abacha Military Administration then embarked on the state creation exercise in 1996 that brought Nigeria into the present federal structure of 36 States

plus the Federal Capital Territory. Analytically,⁴⁴ the creation of states exercises that reconfigured or devolved the four regions from 4 in 1967 to 36 States in 1996, did not only impact the balance of power and leadership in the Nigerian federation,⁴⁵ but, also tilted the balance politically and constitutionally in favour of the North and the Hausa-Fulani ethnic grouping.⁴⁶ The imbalance and over-centralisation in the federal government have been compounded by the political operations of the 1979 and 1999 constitutions to heighten conflicts and divisions amongst the federating units on the one hand and the ethnic groupings on the other. Constitutionally, the legislative competence of the National Assembly over subject-matters specified in the Exclusive and Concurrent Legislative Lists,⁴⁷ the power in the constitution amendment

⁴⁴ The Eastern Region was devolved into (South-East Zone (Ibo dominated states) of Anambra, Enugu, Imo, Abia and Ebonyi and South-south Zone of Cross-Rivers, Akwa Ibom, Rivers, and Bayelsa); the Western Region was devolved into (Southwest Zone (Yoruba dominated states) of Oyo, Ogun, Osun, Ekiti and Lagos) and remaining part of the South-South Zone: Edo and Delta); the Northern Region was devolved into (Northwest Zone (Hausa-Fulani dominate states) Sokoto, Zamfara, Kebbi, Katsina, Kano and Jigawa; the North-Central Zone (Hausa-Fulani dominated minorities ethnics populated states) Kaduna, Kwara, Kogi, Benue, Plateau, and Nassarawa; and Northeastern Zone (Hausa-Fulani-Kanuri dominated minorities populated states) Bornu, Adamawa, Bauchi, Gombe, Taraba, and Yobe).

⁴⁵ Jonas Isawa Elaigwu, *Federalism and National Leadership in Nigeria, Publius: The Journal of Federalism*, Volume 21, Issue 4, 1 January 1991, pp. 125–144.

⁴⁶ See Emmanuel Ojo, "Federalism and the Search for National Integration in Nigeria" (2009) 9 *African Journal of Political Science and International Relations* 384, 390 ("... the greatest travail of Nigerian federalism is the problem of asymmetric power relationships between and among the disparate component units of the federation. There are accusations and counteraccusations as regards, who is dominating who? The Southern part of the federation is really aggrieved with what it called political domination. Empirical data from 1960, when Nigeria became politically sovereign, buttress this position that the federation is tilted in favour of the North."

⁴⁷ *Aminu Tanko v. The State* (2009) LPELR-3136(SC); *Chief Olafisoye v. Federal Republic of Nigeria* (2004) 4 NWLR (Pt 864) 580; *Attorney General of Abia State & 35 Ors. v. Attorney General of the Federation*

procedures, fiscal matters,⁴⁸ political process,⁴⁹ control of the armed forces and the police,⁵⁰ among others, compels the conclusion that the Nigerian federation has evolved into a pseudo-unitary system masquerading as a federation.⁵¹

(2003) FWLR (Pt 152) 131, 147 and 1999 B-C (2002) 6 NWLR (Pt 763) 264; cf. *Attorney General of Lagos State v. Attorney General of the Federation* (2003) 12 NWLR (Pt 833) 1; (2003) 6 S.C (Pt I) 24; *Attorney General of Federation v. Attorney General of Lagos State* SC 340/2010, (2013) 12 Commercial Law Report of Nigeria (CLRN) 5. See BO. Nwabueze, *Federalism in Nigeria Under the Presidential Constitution* (London, Sweet and Maxwell, 1983), 1-22. (hereafter "Federalism in Nigeria").

⁴⁸ *Attorney General of the Federation v. Attorney General of Abia & 35 Ors.* [2002] 16 WRN 1 (S.C.); *Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004*; *Attorney General of Abia v. Attorney General of the Federation* (2006) All FWLR (Pt 338) 604; *Attorney General of Adamawa v. Attorney General of the Federation* (2006) All FWLR (Pt 299) 1450 (SC); *Attorney General of Rivers State v. Attorney General of Akwa Ibom State* (2011) All FWLR (Pt 579) 1023; *Attorney General of Cross River v. Attorney General of the Federation* (2012) All FWLR (Pt 646) 408 (SC).

⁴⁹ I. Ugwuja Daniel, "Political Participation and Democratic Culture in Nigeria: A Case Study of Nigeria" (2015) 10 *Humanity & Social Sciences Journal* 32; Segun Oshewolo, "Politics of Integration and Marginalisation in a Federation: The South-South Question in Nigerian Politics" (2011) 2 *International Journal of Politics and Good Governance* 1; Anifowose, R and Seteolu, D (2004). "The State, Politics and Economy under the Obasanjo Government" (1999 – 2003) 1 *UNILAG Journal of Politics* 38.

⁵⁰ Angella.E. Obidimma and Emmanuel O.C. Obidimma, "State Police an Imperative for True Federalism in Nigeria" (2015) 4 *International Journal of Innovative Research and Development* 77.

⁵¹ Oyelowo Oyewo, *Federalism and Restructuring of Nigeria: Back to the Future*, *Nigerian Journal of Contemporary Law* Vol. 19:1, 2018, 124-125; Stephen Tierney, *Federalism in a Unitary State: A Paradox too Far?* *Journal of Regional & Federal Studies* Volume 19, 2009 - Issue 2: *The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?* pp. 237-253; Kevin P. Akai, "Re-visiting the Structural Foundation of Nigeria Federalism" (2017) 2 *International Journal of Advanced Research in Public Policy, Social Development and Enterprise Studies* 131; Ladipo Adamolekun, "Tackling Unitary Features of Nigeria's Federal System", available online at <https://www.vanguardngr.com/2017/05/tackling-unitary-features-of-nigerias-federal-system/>

1.4. The Nigerian State and Federation

The Nigerian State originated as a colonial state which by definition⁵² at origin was a non-democratic entity and structured primarily to promote the political and economic interests of the Colonial power rather than the advancement of colonial subjects. Thus, building a sense of common identity among the indigenous subjects of its territories was not part of the colonial agenda. The artificial and imposed character of the Nigerian State accounts for many of today's problems.⁵³ Indeed, the earliest Nigerian leaders have been credited with statements questioning the nation-state status of Nigeria. In the words of Chief Obafemi Awolowo, "Nigeria is not a nation. It is a mere geographical expression. There are no 'Nigerians' in the same sense as there are 'English,' 'Welsh,' or 'French,' The word 'Nigeria' is a mere distinctive appellation to distinguish those who live within the boundaries of Nigeria and those who do not".⁵⁴ Sir Ahmadu Bello, also had this to say about the Nigerian State, "Since 1914 the British Government has been trying to make Nigeria into one country, but the Nigerian people themselves are historically different in their backgrounds, in their religious beliefs and customs and do not show themselves any signs of willingness to unite ... Nigerian unity is only a British invention"⁵⁵

Indeed, the Preamble to the Nigerian Protectorate Order in Council 1913, is more revealing of the expedient reasons of

⁵² There are different definitions of a State, one of such definitions states that it is a community of persons, permanently occupying a definite territory, legally independent of external control, and possessing an organised government which creates & administers law over all persons and groups within its jurisdiction is 'State' - Garner, J.W.; *Political Science and Government*, Calcutta - The World Press Pvt. Ltd., p. 44.

⁵³ Sinclair Dinnen, Nation-Building - Concepts Paper, [pazifikinfostelle.org /uploads/ Dossier Nation Building.pdf](http://pazifikinfostelle.org/uploads/Dossier_Nation_Building.pdf). See also SA Shaapera, Theories of the State: Perspectives on the Nigerian Variant, *European Scientific Journal*, Vol. 8, No. 20, pp. 11-27;

⁵⁴ Chief Obafemi Awolowo, *Path to Nigerian Freedom*, London, Faber and Faber (1947) pp. 1-137

⁵⁵ Sir Ahmadu Bello, *My Life* Cambridge, at the University Press; 1st edition (January 1, 1962) pp. 1-246

the Colonialists for the formation of the Nigerian: "And whereas it is expedient that the Protectorates of Northern Nigeria and Southern Nigeria shall be formed into one Protectorate under the name of the Protectorate of Nigeria". This lends credence to the sentiments expressed by Chief Obafemi Awolowo and Sir Ahmadu Bello about the status of the Nigerian State at inception. More importantly, the administration policy of the Protectorate of Northern Nigeria differed from that of the Southern Protectorate of Nigeria, sowing the seeds of the complexity and difficulties to be encountered in the governance of Nigeria. According to the *Colonial Report - Annual No. 878*, Report of 1914:

The general policy in the North and South had in the past differed both in aim and method. The North, cut off from access to the sea by the whole breadth of Southern Nigeria (a distance of 200 miles or more), except by the precarious water-way of the Niger, until the comparatively recent completion of the single railway from Lagos, had been unable to develop its natural resources to any great extent, owing to the cost of transport, which fell as a heavy burden on the export of ordinary produce. A large portion of its peoples - probably about half - occupying the Fulani and Bornu States, were the inheritors of an ancient civilization (based on the religion of Islam), which, prior to the assumption of the government by the British Crown in 1900, had deteriorated into a rule of tyranny and extortion. Slave-raiding had assumed gigantic proportions, and the armies of the Emirs had depopulated vast areas which had previously been inhabited by a dense and industrious pagan population. ...

Southern Nigeria, on the other hand, presented a picture which was in almost all points the exact converse of that in the North. Here the material prosperity had been extraordinary. The revenue had almost doubled itself in a period of five years. The surplus balances exceeded a million and a half. The trade of the interior had been greatly developed by the construction of a splendid system of roads, and by the opening to navigation of waterways hitherto choked with vegetation, while railways, harbour works, waterworks, and other capital expenditure, aggregating

many millions of loan commitments, were in process. *Ad valorem* duties (derived in part on goods for Northern Nigeria) were abolished on one class of imports after another, and for the most part, only specific duties were retained. And so, while Northern Nigeria was devoting itself to building up a system of Native Administration and laboriously raising revenue by direct taxation, Southern Nigeria had found itself engrossed in material development.⁵⁶

The diversity of the North and the South observed at inception of the Nigerian State above, still persists till today, and the resources from the South is still being exploited to not only maintain and develop the North but to sustain the Nigerian federation, where more than a third of the unit states are neither viable nor sustainable. Progressively, from 1914 till date the constitutional framework of the Nigerian State has produced a skewed federal structure and arrangement that still appears to be based on the colonial blueprint in favour of the North and its majority ethnic groupings of Hausa-Fulani and Kanuri.

The focus of our treatment of the Nigerian State, however, is from a Public Law perspective, and not from a political science perspective. As eloquently articulated by Johan Kaspar Bluntschli⁵⁷ both Public Law and Political Science consider the State on the whole, but each from different point of view and in different directions, while Public Law (*Stratsrecht*) deals with State as it is, i.e., its normal arrangements, the permanent conditions of its existence, Politics (*Politik*) has to do with the

⁵⁶ *Colonial Report – Annual No. 878*, Report of 1914, Nigeria, presented to both houses of Parliament by Her Majesty's command in April 1916, p. 37–39. See also *Nigeria Protectorate Order in Council 1913*, providing for the amalgamation of the Protectorates of Northern and Southern Nigeria, Letters Patent, 1913, constituting the office of governor and Commander in Chief of the Colony of Nigeria and providing for the Government thereof.

⁵⁷ Johan Kaspar Bluntschli, *The Theory of the State*, 1887 (Authorised English Translation from the Sixth (6th) German Edition 2000) pp. 12–18

life and conduct of State.⁵⁸ Thus the viewpoint of Public Law of the Nigerian State differs from that of Political Science, although an organic nature of the State perspective will find convergence in the constitution in both Public Law and Political Science, as the "constitution is the body of the State, it is the form in which the nation-state manifests its common life."⁵⁹ Hence, the life of the Nigerian State has been sustained and embodied in its various constitutions up till the current 1999 Constitution (as amended), as the Constitutions from 1954 to 1999 have depicted the Nigerian State as a federation.⁶⁰ While the Nigerian State was viewed as a British colonial creation by the Nigerian Nationalist Leaders, however, the choice of a federation seems to have been tacitly acquiesced to by the Nationalist Leaders as the logical choice for the governance of such diverse and plural society like Nigeria.⁶¹

Importantly, Bluntschli admonished that, if "the State is to fulfil its part as the embodiment of the nation, it is plain that its laws and its institutions must have regard to the capacities and needs of the nation, in a word, it must be popular

⁵⁸ *ibid*

⁵⁹ *ibid*

⁶⁰ El Amah, Federalism, Nigerian Federal Constitution and the Practice of Federalism: An Appraisal, *Beijing Law Review*, 2017, 8, 287–310. See the following judgments of the Supreme Court on the interpretations of the federal nature and structure of the Constitution: *Attorney General of the Federation v. Attorney General of Abia State and 35 Ors.* (2002) All FWLR (Pt. 102) 1; *Attorney General Lagos State v. Attorney General of the Federation*

⁶¹ Chief Obafemi Awolowo, *Path to Nigerian Freedom*, London, Faber and Faber (1947) pp. 1–137. The reasons often adduced for the choice of federation include: Managing large and plural country; promotes competition among jurisdictions; promote innovation and flexibility; recognises local interests and differences (ethnic nationalities); Local autonomy (regional and local government levels); checks federal government power (intergovernmental relations); citizen participation (democratic representations); vital legislative Congress (National Assembly); enhances security (internal and external through huge defence spending); prevents secession (usually, especially civil wars and insurgency)

(volksthümlich).⁶² He elucidated further that, a "constitution which disregards the peculiar character of the nation, and which does not correspond with its spirit and thought, is an unnatural and incapable body. If it is forced upon a people by a foreign power, or if, as we have seen before now, in times of great political fever, it has been chosen by the disordered and misguided nation, it collapses soon as ever that power slackens or the nation recovers its reason. In either case, however, the damage to the political organism is so serious that it may result in the fall of the nation, and at least cripple its vigour for a long time."⁶³ Thus, the Nigerian federation in the absence of the Colonial authority or Military force manifest threats of collapse arising from the pressure exerted from within by the centrifugal forces of discontent with its structure and operation.

The constitutional and legal structure of the Nigerian federation has changed over time from its origin in 1954 till date. For example, the hallmark of the Nigerian federalism of the post-independence era, was in the nature and structure of the federating regions that had their own constitutions, despite the federal constitution in which the powers of the regions covered a wide scope of subject matters, such that there was a balanced power relationship between the federal and regional governments.⁶⁴ The Nigerian federation of this era was epitomised by a federal arrangement of the legislative competence of the central and regional legislatures over the subject matters shared between them in the exclusive legislative list of 44 and 45 items, on the one hand, and the concurrent legislative list of 28 and 29 items in 1960 and 1963 Constitutions, respectively. As regards fiscal federalism, the finances of the central and regional governments were well

⁶² Johan Kaspar Bluntschli, *The Theory of the State*, 1887 (Authorised English Translation from the Sixth (6th) German Edition 2000) pp. 95

⁶³ *ibid*

⁶⁴ Sections 2, 3 and 5 of the 1960 and 1963 Constitutions established the federations, the federating regions and the Constitutions of each region. Moreover, great autonomy was given to the various regions to give room for functional division of powers between the central and regional governments.

defined and maintained, such that the Consolidated Funds of the central and regional governments were quite distinctively established.⁶⁵

As earlier observed the three regions under the 1960 Constitution were successively devolved into 36 States under the 1999 Constitution (as amended). The 36 States have invariably been weakened in relation to the federal government with respect of jurisdictional competences (legislative, executive, and judicial), revenue and resource control and management, control of the Nigerian Police Force and other para-military agencies, coupled with the politics, political system, and political governance of the federation have all been by and large centralised. Worst still, the system of administration of local government constitutionally recognised as the third tier of government, has been traumatised by the overbearing powers of the states, turning the local governments into no more than appendages of the state governments.⁶⁶

Unfortunately, the colonial origins of the Nigerian State meant that after Independence, in the absence of the British Colonial Authority that enforced the unity of the state, ethnic and tribal politics threatened the coercion of the state, eventually resulting into military coup d'état and the Nigerian Civil War of 1966-67, respectively, followed by long periods of military rule and attendant negative impacts.⁶⁷ Coincidentally, the

⁶⁵ See Sections 123 and 129 of the 1960 and 1963 Constitution respectively, in relation to sections 59 and 56 of the Northern Nigeria Constitution and Eastern Nigeria Constitution of 1963 respectively.

⁶⁶ Oyelowo Oyewo, *The Metamorphosis of the Local Government System of Administration*, *Current Themes in Nigerian Law*, (ed) Yemi Akinseye-George, pp. 119-139; Oyelowo Oyewo, *Local Government Law: Cases and Materials*, 2016, University of Lagos Press, pp 29-288

⁶⁷ "Basically, Military federalism in Nigeria has two conspicuous features. The first is the military superstructure: military regime in which institutions of popular participation are suspended. The military hierarchy of authority, the head of the federal military government appoints all state governors who are responsible to him. This negates

command hierarchical structure and nature of the successive military regimes "unconstitutional regimes", when the supremacy of the constitution was suspended and the unsuspended portions of the Constitution made inferior to military decrees,⁶⁸ have left the imprimatur of unitary character on the Nigerian Federation.⁶⁹

One will also want to point out that the Public Law approach of formalism concentrates on the structure and systems to implement the federal principles. Focus then is on the constitutional arrangement that imports the characteristics of federal constitutions earlier mentioned. Eight features have been identified⁷⁰ as the foundations of a federal democratic

the traditional principle of federalism and fits the Apter's model of mobilisation with chain of command and minimum accountability to the people." See Osabiya Babatunde, "Nigeria's Federalism, Unity and Development" (2015) 15 Global Journal of Management and Business Research 1, 2, quoting I Elaigwu, "The Military and State Building: Federal – State Relations in Nigeria 'Military Federalism'" in AB Akinyemi, PD Cole and Walter I. Ofonagoro (eds) (Lagos, Nigerian Institute of International Affairs, 1979), 1.

⁶⁸ Supremacy (Enforcement of Powers) Decree No. 28 of 1970; *Lakanmi Kikelomo v. Attorney General, West* (1971) UILR 1

⁶⁹ A. Ojo, *Constitutional Law and Military Rule in Nigeria* (Ibadan: Evans, 1987), 16–32; Taiwo Osipitan, Federalism under the New Military Administration In Nigeria: Myth or Reality? (1986) 5, *J.P.P.L.*, p. 60 – 'The structure of government was federal in form, but unitary in substance.'

⁷⁰ Arend Lijphart, "Consociation and Federation: Conceptual and Empirical Links", *Canadian Journal of Political Science*, 1979 pp. 499–515, Also his "Non-Majoritarian Democracy: A comparison of Federal and Consociational Theories, *Publius*, spring 1985, Vol. 15, No.2, pp. 8–9: 1) Executive sharing: instead of one - party, a federal democratic set up tends to have coalition governments of two or more parties that together have the support of a broad majority in parliament. The most far reaching form of executive power - sharing is a grand coalition of all the important parties; 2) Balanced executive- legislative relations: instead of an executive that dominates the legislature, a federal democratic system is characterised by an executive and legislature that are in a rough balance of power relationship with each other, which may be reinforced by a formal constitutional separation of powers as in the USA, Switzerland and Nigeria; (3) Strong bicameralism: instead of concentrating all legislative powers into the hands of the majority in a unicameral legislature, legislative power

system, and these have featured in the constitutions of the Federal Republic of Nigeria, especially, the 1979 and 1999 Constitutions. Undoubtedly, the 1999 Constitution (as amended) in its provisions amply expresses these foundational attributes of a federal state, which is the sense in which one can further understand the interpretational approach of the apex court as epitomised in the dictum of Onnoghen JSC in *FRN v. Anache*,⁷¹ that the ideals and theory of true federalism in relation to the Nigerian Federation ought to be assessed from the substantive provisions of the Constitution.

But, as a matter of constitutional facts, the 1979 and 1999 Constitutions promulgated into force by military Decrees, have borne the imprimatur of unified and centrist nature of military juntas, warping the federal principles in the constitutional form, and the structure of the federation in the Constitution. Thus, the 1999 Constitution, which came into force without any populist input or affirmation carries the baggage of military unitarism, overbearing concentration of powers and resources in the federal government, weakened and often times unviable unit states, and intimidated local government.

may be shared with a second chamber; (4) Multi-party system: a condition where more than one party seek to have the share in the power process; (5) Multidimensional party system: in addition to the socio-economic issue dimension, the parties tend to differ from each other along one or more dimensions, such as ethnicity, language, religion, level of education, *inter alia*; (6) Proportional representation: in contrast with the plurality method of election, the basic aim of proportional representation is to divide the parliamentary seats among the parties in proportion to the votes they receive; 7) Federalism and decentralisation: instead of centralising power at a single centre, it is distributed between the centre and the constituent units in such a manner as may be convenient for the both sets of governments to play their respective role within the prescribed limit; 8) Written Constitution: instead of the flexibility of an unwritten constitution, federalism is characterised by a more rigid written constitution which can be amended only by following the prescribed provision of the constitution - a process where both the Houses enjoy equal powers and the constituent units have their role in special circumstances.

⁷¹ *Federal Republic of Nigeria v. Alhaji Mika Anache & Ors*, (2004) 14 WRN 1-90

The trajectory of the changes in the practice of federal principles in Nigeria can be said to be antithetical to the unity in diversity *raison d'être*, and the formalistic constitutional arrangement approach will appear to be unable to contain the centrifugal forces threatening to disintegrate the Federal Republic in turmoil. It has been eloquently observed⁷² that, although the federal system has helped to cross-cut major ethnic identities, foster inter-regional integration, promote inter-group equilibrium and generally cauterise potentially destabilising centrifugal challenges to Nigeria's continuity and survival as a single political community, however, the system's rampant political lack of accountability and corruption have perverted intergovernmental decentralisation, fuelled local-level antagonisms, strained national unity and undermined socio-economic development, all of which tend to detract from the potential value of the Nigerian experience as a possible model for conflict management and the governance of diversity elsewhere in Africa and the developing world.

PART II

2.0. A Federation under Pressure

2.1. Nigerian Federation and the National Question Dilemma

The Nigerian State and Federation has been described as "fragile" and its democratic practice since 1999 till date viewed as "feckless democracy" and "pseudo democracy", that has not fared any better,⁷³ thus piling on more pressure unto a polity that is already stretched to the limit in the face of teeming population, grave infrastructure deficit, systemic mismanagement of vast and valuable natural resources through systemic and endemic corruption accompanied by

⁷² Rotimi Suberu Federalism in Africa: The Nigerian Experience in Comparative Perspective *Journal of Ethnopolitics* Vol 8, Issue 1, 2009, Pages 67-86

⁷³ Richard Joseph, Dilemmas of Democracy and State Power in Africa, Thursday, January 7, 2016, *Brookings Op-Ed*

vicious circle of abject poverty within the masses, compounded by insecurity, ethnic and religious conflicts and terrorism. "National Question Issues" (a sobriquet for all that was/is wrong with the Nigerian federation), has become like a code name for all the controversies, doubts and experimentation that surround Nigeria's search for stability, legitimacy and development. Essentially, the National Question concerns the fundamental basis of our political existence, that is to say, from a Public Law perspective, our Constitution as the basic law, which governs the co-existence of Nigerians as individuals and cultural groups within one political system or state.⁷⁴ Issues such as: constitutional and political framework in the division of powers within the federation between the federal state and local government; resource and revenue allocation and fiscal federalism; minority-majority relationships, access to power, political appointments; security and policing, ethnic/religious conflicts; and other issues affecting the various nationalities within the federation, especially poverty and corruption, are included in the National Question issues. When the National Question issues continue unresolved it increases the pressure on the State institutions to perform, heightens tensions, conflicts, instability and turmoil within the federation. Several conceptual "solutions" then begin to emerge in the federalism narrative with compelling force of advocacy, militancy, insurgency and even war, to press home the fundamentality of such National Question issues, and the need to resolve them, or allow the centrifugal forces be unleashed to disintegrate the federation as we know it today.

2.1.1. Division of Powers: Federal State Local Government relations

The sharing of power between the federal/national government and the federating states is formally undertaken through the Constitution which contains provisions delineating the legislative and executive powers of a tier of government in

⁷⁴ JF Ade Ajayi, "The National Question in Historical Perspective", *The Guardian*, Sunday, 21 August 2016

sections 4 and 5, chapters V and VI, and Exclusive and Concurrent Legislative Lists. The National Assembly exercises the federal legislative powers, while the State Houses of Assembly exercise the state legislative powers.⁷⁵ In resolving conflicts in the exercise of legislative powers between the National Assembly and the State House(s) of Assembly the Supreme Court ensures that each tier of legislative arm stays within the confines of its constitutional sphere of competence, but gives some preeminence to the National Assembly on concurrent matters by applying the principle of "covering the field" (pre-emption) to resolve such conflicts in favour of the Act of the National Assembly over such conflicting Law(s) of the State House(s) of Assembly, by holding the same to be in abeyance. Although, any subject-matter that is not vested in the National Assembly either by the Exclusive or Concurrent Legislative Lists falls within the residual matter and within the legislative competence of the State Houses of Assembly, consequently any exercise of legislative powers by the National Assembly on such residual matter will be declared unconstitutional by the Supreme Court.⁷⁶ The constitutional competence of the National Assembly, and by extension the federal government, through the constitutional arrangement of the exclusive and concurrent legislative lists, and the doctrine of covering the field is disproportionately empowering the

⁷⁵ *Attorney-General, Ogun State v. Attorney-General, Federation* (2002) 18 NWLR (Pt. 798) 232

⁷⁶ See *Attorney-General Ogun State v. Agberuagba* (1985) 1 NWLR (pt. 3) 395 at 405 per Bello JSC (as he then was); *Emelogu v. The State* (1988) 19 NSCC (pt. 1) 869 at 879 per Nnamani JSC and at 890 per Karibi-Whyte JSC; and *Attorney-General Lagos v. Attorney-General, Federation* (2003) 12 NWLR (Pt 833) 1 S.C. Bello JSC (later CJN) observed in *A.G. Ogun State v. Aberuagba* (supra) thus: "A careful perusal and proper construction of section 4 [of the 1979 Constitution] would reveal that the residual legislative powers of government were vested in the States. By residual legislative powers within the context of section 4, is meant what was left after the matters in the Exclusive and Concurrent Legislative Lists and those matters which the Constitution expressly empowered the Federation and the States to legislate upon had been subtracted from the totality of the inherent and unlimited powers of a sovereign legislature. The Federation had no power to make laws on residual matters."

federal government in relation to the state government, inherently weakening the state governments in relation to the federal government.

This formed part of the issues discussed and addressed by the National Conference 2014, thus:

The structural composition of Nigeria's federal system has increasingly come under critical scrutiny in recent years. This has been accompanied in particular by agitations for a review of the legislative lists of the tiers of government with a view to reducing the legislative powers at the federal level and devolving same to the federating units. As conceived, the problem is that there is an over-concentration of power at the centre to the detriment of the federating units of the country. A skewed power arrangement in favour of the federal government has greatly resulted in bloated administrative machinery at the centre; with a disconnect between the centre and its developmental policies and the intended recipients at the grassroots.⁷⁷

Nwabueze in *Reflections on the 1999 Constitutions* lamented the distortion of federalism under the 1999 Constitution, which he observed has significantly distorted the configuration of powers initially created by the 1960 and 1963 Constitutions to the detriment of the states, and he pointed out that power sharing arrangement under Nigeria's federal system, assigns to the federal government powers and resources so overwhelmingly greater than those assigned to the states, thereby depriving the latter of any meaningful autonomy in relation to the federal government. This distorted configuration of the power sharing under the 1999 Constitution is one of the main reasons for the call for constitutional reforms to create "true federalism" "devolution" "decentralisation" "rebalancing"

⁷⁷ NATIONAL CONFERENCE, Final Draft of Conference Report (August 2014), available online at www.premiumtimesng.com (hereafter Conference Report).

"reconfiguration" "restructuring" in power sharing within the Nigerian federation.⁷⁸

The National Conference 2014 decisions and recommendations on devolution and the review of the legislative lists of the tiers of government in the Exclusive and Concurrent Lists is on point on this issue and it is recommended for immediate action of constitutional reforms by the 9th National Assembly,⁷⁹ that is being voted into power in the course of the February 2019 Election. The 9th Assembly must ensure that the process of the 4th Alteration commenced by the 8th National Assembly, that has seen some Alteration Bills signed into law by President Muhammadu Buhari, is followed through to its logical conclusion of constitutional reforms that will address the imbalance in the legislative competences of the Federal Government in relation to its federating states.

2.1.2. Resource and Revenue Allocation and Fiscal Federalism⁸⁰

The federal-state fiscal relationship is one major aspect of the theory and practice of federalism in Nigeria, apart from the federal-state power sharing and regulatory powers relationships discussed above. Fiscal federalism is a general normative framework for assignment of functions to the different levels of government and appropriating fiscal instruments for carrying out these functions, that is, an arrangement that involves intergovernmental fiscal relations that are prescribed by legal or non-legal norms binding on the federating states and the central/national government within

⁷⁸ N A Inegbedion & E Omoregie, Federalism in Nigeria: A Re-Appraisal, *Journal of Commonwealth Law and Legal Education* Volume 4, Issue 1, 2006, 69-83

⁷⁹ National Conference Report 2014, pp. 132 - 151

⁸⁰ Oyelowo Oyewo, Federalism and Restructuring of Nigeria: Back to the Future, *Nigerian Journal of Contemporary Law* Vol. 19:1, 2018, 124-125

the federation.⁸¹ Fiscal federalism constitutes a set of guiding principles, a guiding concept that helps in designing financial relations between the central/national and sub-national/regional/state levels of government, particularly in their relationships in all aspects of resources control, allocation, mobilisation, taxes, and expenditures. In Nigeria fiscal federalism, the constitution plays a primary role of centralising and decentralising all the accruing revenue and resources within the federation into specified accounts. For example, section 80 of the Constitution provide:

80. (1) All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation.
- (2) No moneys shall be withdrawn from the Consolidated Revenue Fund of the Federation except to meet expenditure that is charged upon the fund by this Constitution or where the issue of those moneys has been authorised by an Appropriation Act, Supplementary Appropriation Act or an Act passed in pursuance of section 81 of this Constitution.
- (3) No moneys shall be withdrawn from any public fund of the Federation, other than the Consolidated Revenue Fund of the Federation, unless the issue of those moneys has been Authorised by an Act of the National Assembly.
- (4) No moneys shall be withdrawn from the Consolidated Revenue Fund or any other public fund of the Federation, except in the manner prescribed by the National Assembly.

⁸¹ Dare Arowolo, "Fiscal Federalism in Nigeria: Theory and Dimensions", *Afro Asian Journal of Social Sciences* Volume 2, No. 2.2 Quarter II 2011,

The Revenue Mobilisation Allocation and Fiscal Commission is constitutionally vested with the power to: monitor the accruals to and disbursement of revenue from the Federation Account; review, from time to time, the revenue allocation formulae and principles in operation to ensure conformity with changing realities; advise the Federal and State Governments on fiscal efficiency and methods by which their revenue can be increased; and determine the remuneration appropriate for political office holders, including the President, Vice-President, Governors, Deputy Governors, Ministers, Commissioners, Special Advisers, Legislators and the holders of the offices mentioned in sections 84 and 124 of the Constitution⁸². Until the establishment of this permanent Commission for Revenue Mobilization and Allocation in 1989, periodic ad hoc committees had been set up every five years by the government⁸³. However, the current revenue allocation formula was submitted according to Law by the Revenue Mobilization, Allocation and Fiscal Commission (RMFAC) to the National Assembly, whereby the Federal: State: Local: Joint government shares are in the percentages of 47.19: 31.10: 15.21: 6.50, where the last figure is a National Priorities Services Fund (comprised of four different funds) to be jointly administered by all tiers of government. The problem of revenue allocation within the Nigerian federation is one that has recurrently pitched the protagonists for less revenue to the federal government against the protagonists for the centralization of resources in the national/federal government.

Moreover, in the Nigerian Federation, like some other federations, where the levying and collecting of major taxes are concentrated in the federal government, there are constitutional stipulations for the sharing of the proceeds of these federal taxes with the states, as seen in sections 80(1), 120(1) and 162(1) of the 1999 Constitution. Three factors have

⁸² See section 153 and Third Schedule Part I. N.

⁸³ The previous Committees were: Phillipson Commission (1946); Hicks-Phillipson Commission (1951); Chicks Commission (1953); Raisman Commission (1957); The Binns Commission (1964); Dina Commission (1969); Aboyade Technical Committee (1977); Okigbo Committee (1980); and Danjuma Commission (1988)

contributed to the frequent concentration of the major taxing powers in federal governments. The first involves the fact that the concentration of resources in the federal government is necessary if it is to perform the redistributive role usually expected of it. The second involves the influence of Keynesian theories concerning the need for federation-wide policies pertaining to economic stability and development. Such theories were particularly prevalent at the time many of the current fiscal arrangements were developed. The third factor involves the promotion of tax harmonization and mobility for the purposes of economic union. The current formula applicable to revenue allocation is Federal Government, 52.68 per cent; states, 26.72 per cent; and local governments 20.60 per cent.⁸⁴ A cursory analysis of the fiscal relations in the Nigerian federation reveals a considerable difference between the constitutional form and the operational reality of fiscal federalism, revenue allocation, resource control and management. Indeed, it is clear that the above-mentioned factors for the concentration of fiscal powers in the federal government have become unsustainable.⁸⁵ The reasons for this position have been articulated by the various fiscal commissions.⁸⁶ The unsustainability of fiscal power concentration is also being reinforced by the glaring fact of the failure of the federal government to manage the resources of the nation efficiently and thus bring about the desired

⁸⁴ <https://www.vanguardngr.com/2017/05/fg-states-lgs-share-n1-41trn-q1-2017/>

⁸⁵ This is borne out of a historical review of the evolution of the revenue allocation principles and formula from the Phillipson Commission of 1946-1951 till the Revenue Mobilisation Allocation and Fiscal Commission. Femi Omotoso and Toyin Abe, "Federalism, Politics and Governance in Nigeria (2014) 4 Public Policy and Administration Research 64; Eyene Okpanachi and Ali Garba, "Federalism and Constitutional Change in Nigeria" ((2010) 7 Federal Governance 1; NN Elekwa, MF Bellow and AT Akume, "Fiscal Restructuring in Nigeria: A Historical Review" (2011) 9 Journal of Research in National Development 1596.

⁸⁶ Basil C. Onuoha, Ufomba Henry, and Samuel E. Imoh, "The Politics and Problem of Fiscal Federalism and Revenue Allocation Formula in Nigeria: Who Should Get What, How, When and Why?" (2016) 10 African Journal of Political Science and International Relations 131.

developments in all regions/states/local governments within the federation.⁸⁷

The National Conference 2014⁸⁸ recommended for rebalancing a vertical allocation of the revenue sharing formula⁸⁹ of Federal Government, 52.68 per cent; States, 26.72 per cent;⁹⁰ and local governments 20.60 per cent. It also recommended a revised revenue sharing formula of Federal Government, 42.5 per cent; States 35 per cent; and local government 22.5 per cent. For the horizontal sharing formula,⁹¹ the factors/principles and percentages are as follows:

⁸⁷ Nye Oruwari and Charles A. Briggs, "Fiscal Federalism and Resource Control Agitations: Implications for Nigeria's Socio-Economic Development" (2015) 18 Research on Humanities and Social Sciences 163; Osabiya, supra n 79; Gbadebo O. Odularu, "Crude Oil and the Nigerian Economic Performance" ((2008) Oil and Gas Business, available online http://www.ogbus.ru/eng/authors/odularo/odularo_1.pdf

⁸⁸ National Conference Report, p. 153.

⁸⁹ The Vertical Allocation Formula: This formula shows the percentage allocated to the three tiers of government i.e. federal, states and local governments. This formula is applied vertically to the total volume of disbursement revenue in the Federation Account at a particular point in time. The VAF allows every tier of government to know what is due to it; the Federal Government on one hand and the 36 States and 774 Local Governments on the other. See Victor I. Lukpata, "Revenue Allocation Formulae in Nigeria: A Continuous Search" (2013) 2 International Journal of Public Administration and Management Research 32, 33.

⁹⁰ See Allocation of Revenue (Federation Account Etc.) Act

⁹¹ The Horizontal Allocation Formula: The formula is applicable to States and Local Governments only. It provides the basis for sharing of the volume of revenue already allocated enbloc to the 36 States and 774 Local Governments. Through the application of the principles of horizontal allocation formula, the allocation due to each State or Local Government is determined. Thus, it can conveniently be concluded that the vertical allocation formula is for inter-tier sharing between the three tiers of government while the horizontal allocation formula is for intra tier sharing amongst the 36 States and the 774 Local Governments in Nigeria. See Lukpata, *opt cit*.

Equality Population Landmass/Terrain Internally Generated Revenue Social Development Factor (For the purpose of emphasis, the Social Development Factor comprised Education (4.0), Health (3.0) and water (3.0))⁹²

The National Conference 2014 recommended the following reforms for the horizontal allocation formula. The Conference decided as follows:

- (a) That the percentages given to Population and Equality of States in the existing Sharing formula be reduced while that assigned to Social Development Factor be increased to a much higher percentage so as to ensure accelerated development of all parts of the country;
- (b) That three new principles listed hereunder be added to the existing sharing formula to enhance economic, infrastructural and human development in the country:
 - (i) Inverse Primary School Enrolment;
 - (ii) Federal Presence; and
 - (iii) Unemployment.
- (c) That the "technical" aspects and details of revenue sharing formula shall be referred to the Revenue Mobilisation, Allocation and Fiscal Commission and the National Assembly for final determination.

The proposed sharing formula by Conference is based on (a) diminished emphasis on principles of equality of states and population; (b) increased emphasis on social development factor; and (c) internally generated revenue effort.⁹³

The more contentious and volatile issue in revenue allocation and fiscal relation in Nigeria is focused on the derivation principle and the counter argument of resource control. Section 162(2) proviso to the revenue allocation formula is that "the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of

⁹² Kabir A. Bashir, "The Mechanics of Revenue Allocation: Understanding the Need for Effective Data Collection and Management" (Workshop Paper, 2008).

⁹³ National Conference Report 2014, p. 154

the revenue accruing to the Federation Account directly from any natural resources." However, the Supreme Court's interpretation⁹⁴ that brought about the dichotomy between the off-shore and on-shore oil for purposes of derivation, resulted in the expropriation of the derivation portion of the offshore oil to the federal government. This prompted the National Assembly to pass an Act to abolish the off-shore and on-shore dichotomy for the purposes of revenue allocation and derivation principle.⁹⁵ The 13% derivation has been contested as being inequitable considering environmental degradation, abject poverty, and extreme underdevelopment occasioned by the exploitation and extraction of oil and gas from the resource community. These environmental challenges have led to agitation for an increase in derivation to either 50% or, at the minimum, 25% by the people of Niger-Delta Region. Things came to a head during the National Political Reform Conference when the representatives of the Niger-Delta Region staged a walk-out due to the attitude and response of the representatives of the non-resource regions, especially the Northern Region to their demands for an upward revision of derivation to at least 25%.⁹⁶

The need for reform and revision of the present 13% derivation principle found general expression within the National Conference 2014 Report, albeit, the recommendation proffered is for a holistic approach of formulating a principle that will address the development of the resource derivation communities.⁹⁷ Failure to implement these modest recommendations seemed to have pushed the recent agitations for the reforms of the revenue allocation formula and derivative principles up to outright demands for resource

⁹⁴ *Attorney General of the Federation v. Attorney General of Abia State* (2001)11NWLR(Pt725) 689.

⁹⁵ Revenue Allocation (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004.

⁹⁶ Chuks C. Egugbo, "Resource Control and the Politics of Revenue Allocation in Nigerian Federation" (2016) 5 *International Journal of Arts and Humanities* 186.

⁹⁷ National Conference Report, supra, pp. 153-155.

control which presents a complete paradigm shift from derivation, as each region/state will be in charge of its resources and pay necessary revenue⁹⁸ to the federal/central government.⁹⁹ The point was stressed in one of the Resolutions of the Yoruba Summit thus:

That the greatest imperatives of restructuring Nigeria is to move from a rent-seeking and money sharing anti-development economy to productivity by ensuring that the federating units are free to own and develop their resources. They should pay agreed sums to the federation purse to implement central services.¹⁰⁰

Whether the revenue allocation formula (vertical and horizontal) and/or derivation principle or resource control are revised/reformed or not, there can be no genuine restructuring for a sustainable and dynamic federal practice in Nigeria if these issues are not seriously addressed.

2.1.3. Minority-Majority Relationships, Access to Power

The ethnic and tribal diversity and pluralistic nature of the Nigerian federation, (see fig.1), is often a source of conflict

⁹⁸ Sylvia U. Agu, "Fiscal Federalism and Resource Control in Nigeria: Lessons from United States of America" in *Ethnic Nationalism & Democratic Consolidation: Perspectives from Nigeria and the United States of America*, Jonah Onuoha and Pat U. Okpoko (eds) (Nsukka, Nigeria, Great AP Express, 2004) 263.

⁹⁹ Ngozi Nwogwugwu and Adewale K. Kupoluyi, "Fiscal Federalism and Resource Control in Nigeria" (2015) 6 *IOSR Journal of Economics and Finance* 21; CI Nenyiaba, "Fiscal Federalism and Issues of Resource Control in Nigeria" (2013) 4 *International Journal of Economic Development Research and Investment* 42; Sam U. Chijioke, Eme O. Innocent and Ikechukwu EJ Emeh, "Issues in Nigerian Fiscal Federalism; the Relationship Between the Principle of Derivation and Resource Control" (2012) 1 *Kuwait Chapter of Arabian Journal of Business and Management Review* 54.

¹⁰⁰ Yoruba Summit: The Ibadan Declaration Communiqué of Yoruba Summit Held in Ibadan on 7th September 2017. See the Nigerian Lawyer, Sept 9 2017, at <https://thenigerialawyer.com/yoruba-summit-the-ibadan-declaration-communique-of-yoruba-summit-held-in-ibadan-on-7th-september-2017/>

within the federation as the ethnic/tribal alignments within the federation often overheat into ethnic violence. Indeed, the concept of majority groups – Hausa/Fulani, Yoruba and Ibo (WAZOBIA), pitted against the minority groups of the Middle-Belt and South-South, continues to work against the unity and integration of the Nigerian federation.

The concept of ethnicity connotes “a social identity formation that rests upon culturally specific practices and a unique set of symbols and cosmology. A belief in common origins and a broadly agreed common history provide an inheritance of symbols, heroes, events, values and hierarchies, and conform to social identities of both insiders and outsiders.”¹⁰¹ Modern nation-states tend to be pluralistic in the widest possible sense, including ethnicity and religion. Whilst this diversity can be a source of strength, they have been known also to fuel mutual suspicion and constituted ready fodders for the embers of conflict. Ethnicity within the Nigerian Federation has been contextualising as “the employment or mobilisation of ethnic identity and difference to gain an advantage in situations of competition, conflict or cooperation”¹⁰² It is recognised that the

¹⁰¹ C. O. Oteh and R. C. Eze, Ethnic-Religious Conflicts and the Travails of National integration in Nigeria's Fourth Republic. *Canadian Social Science*, 8(2) (2012) 79-85. See also N. S. Nnabuihe, A. Aghemalo, & E. O. Nwosu, Ethnicity and Electoral Behaviour in Nigeria, *European Scientific Journal* 2 (2014) 159-178;] U. Ukiwo, The study of Ethnicity in Nigeria, *Oxford Development Studies* 33(1) (2005) 7-23; R. Brubaker, M. Loveman and P. Stamatov, Ethnicity as Cognition, *Theory and Society* 33(1) (2004) 31-64; E. E. Osaghae, Structural Adjustment and Ethnicity in Nigeria, *Uppsala: Nordic African Institute*, 1995; A. Adegbamigbo & C. I. N. Uche, Ethnicity and Ethnic Politics: An Impediment to Political Development in Nigeria, *Public Administration Research*, 4(1) (2015) 59-67; Remi Chukwudi Okeke, Adeline Nnenna Idike, Ethnicity, Political Leadership and National Development in Nigeria: The Contradictions and the Local Government Nexus, *World Scientific News*, 56 (2016) 67-81

¹⁰² Osaghae, E., *Structural adjustment and ethnicity in Nigeria*, Uppsala: Nordic African Institute, (1995); Osaghae, E. (1998) 'Managing multiple minority problems in a divided society: The Nigerian experience', *Journal of Modern African Studies*, Vol. 3: 1-24; Osaghae, E. (1991) 'Ethnic minorities and federalism in Nigeria', *African Affairs*, Vol. 90: 237-258.

country has over 350 ethno-cultural groupings. This multi-ethnicity has been compounded by pronounced religious differences, exploited usually for political considerations by avid political classes in contexts of extreme poverty and very low educational development among the mass of the populace. Whereas Nigeria is supposed to be a secular state, “one nation bound in freedom, peace and unity”, the prevalence of religiosity and its related nepotism at all levels, has effectively undermined the objectivity which secularity would have ordinarily imbued in national politics.¹⁰³

A minority ethnic group was defined as one which is numerically lesser than major ethnic groups of a given country, that may possess ethnic, religious or linguistic characteristics which differ from those of the other groups, and usually shows a sense of solidarity directed towards preserving its culture, tradition, religion or language.¹⁰⁴ Over the years, the issue of the rights and freedoms of minorities and ethnic nationalities concerning marginalisation and exclusion have come to constitute a serious challenge to national cohesion and development. The sustained agitations have roots going back as far back as the commencement of the amalgamation processes, as earlier discussed, which culminated in the unification of the Southern and Northern Protectorates and the Colony of Lagos in 1914, forcing minority ethnic groups into the mix of the Nigeria federation. These invariably brought the various ethnic minorities under the three dominant ethnic groups – the Hausa/Fulani, Ibo and Yoruba. It must be noted that minority/dominant ethnic group consciousness and agitations are also exhibited at the sub-national levels. In all, the ethnic minority and the National Question are, the products of the Balkanisation of nationalities resulting in their spread across states and even international boundaries.¹⁰⁵

Minorities fears of domination by the three powerful regions were openly expressed at the 1953 Constitutional Conference.

¹⁰³ National Conference Report 2014, pp. 47

¹⁰⁴

¹⁰⁵ ibid p. 52

It was at the 1957 Constitutional Conference that the British Colonial Secretary appointed a Commission headed by Henry Willinks to ascertain the facts of the fears of minorities in Nigeria and proposing means to allay those fears; to advise what safeguards should be included for this purpose in the Constitution; and as a last resort to the agitation, make a case for the creation of States. The report submitted is known as the 1958 Willinks Commission Report,¹⁰⁶ that made recommendations, *inter alia*, for the guarantee of fundamental rights in the independence constitution, so as to safeguard and allay the fears of Minorities. Albeit, the Nigerian Constitutional Conference that resumed in London from 29 September to 27 October 1958, resulted into internal self-government in 1959, the Independence Constitution of 1960, and the granting of independence on 1 October 1960.¹⁰⁷ Unfortunately, post-independence political and ethnic conflicts were exacerbated into the Biafra Civil War from 30th May 1967 until 15th January 1970,¹⁰⁸ sowing the seed of distrust among the ethnic groupings that have coloured the relationship between the ethnic groups, and fanned unquenchable flame on nationalism and separatism amongst the Ibos, as witness the modern self-determination/insurgent activities of the Biafra secessionist agitators project through the Movement for the Actualisation of

¹⁰⁶ Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means to Allaying Them – Willink Commission Report Conclusions and Recommendations, pp. 98–108 – 7/1/1958 Digitised by The Adaka Boro Centre: <http://www.adakaboro.org>, in collaboration with the Community Defence Law Foundation (CDLF) at: http://eie.ng/wp-content/uploads/2014/03/TheWillinkCommissionReport_conc_recom_1t.pdf.

¹⁰⁷ National Conference 2014, Final Draft Conference Report August 2014, pp. 9–10, cited at: www.premiuintimesng.com.

¹⁰⁸ Lasse Heerten and A. Dirk Moses, "The Nigeria–Biafra War: Postcolonial Conflict and the Question of Genocide" (2014) 16 *Journal of Genocide* 169, 173. – "Repeated outbursts of violence between June and October 1966 peaked in massacres against Igbos living in the Sabon Gari, the 'foreigners' quarters' of northern Nigerian towns. According to estimates, these riots claimed the lives of tens of thousands. This violence drove a stream of more than a million refugees to the Eastern Region, the 'homeland' of the Igbos' diasporic community."

the Sovereign State of Biafra (MASSOB) and Indigenous People of Biafra (IPOB), in the Eastern parts of the federation.¹⁰⁹

Irrespective of the guarantee of fundamental rights in the constitutions, and even by the African Charter on Human and Peoples' rights, the fear of domination of the minorities in the federation still persists, resulting in more constitutional mechanisms and devices for assuaging these fears. Federalism, progressive devolution from three (3) regions and creation of 36 states and 774 local governments,¹¹⁰ the shift from parliamentary to presidential system, the adoption of the federal character principle and the institutionalization of quota systems,¹¹¹ the prohibition of ethnic political parties, and consociational politicking through geopolitical zones, are some of the constitutional/political approaches that Nigeria has taken

¹⁰⁹ Largely, these groups are raising the ghost of the Biafra Civil War to galvanise the Ibo ethnic group to demand for dissolution and secession or, at the minimum, restructuring of the federation. Imanuel Jannah, "How MASSOB and IPOB began", Obindigbo, June 9 2017, <http://obindigbo.com.ng/2017/06/biafra-massob-and-ipob-began/> accessed on July 18, 2017. See also Rotimi Fasan, "IPOB/MASSOB: 'Beyond the Symbolism of a Struggle', The Vanguard, June 7 2017, available online at: <http://www.vanguardngr.com/2017/06/ipobmassob-beyond-symbolism-struggle/>

¹¹⁰ Sections 1–3, and 7 of the 1999 Constitution (as amended); *Attorney General of Lagos State v. Attorney General of the Federation & Ors.* (2014) LPELR-22701(SC); *Attorney-General of Abia State & Ors v. Attorney-General of the Federation* (2003) LPELR-610(SC)

¹¹¹ Section 14(3) & (4) of the 1999 Constitution:
(3) The composition of the Government of the Federation or any of its agencies and the conduct of its affairs shall be carried out in such a manner as to reflect the federal character of Nigeria and the need to promote national unity, and also to command national loyalty, thereby ensuring that there shall be no predominance of persons from a few State or from a few ethnic or other sectional groups in that Government or in any of its agencies.
(4) The composition of the Government of a State, a local government or any of its agencies and the conduct of its affairs shall be carried out in such manner as to recognise the diversity of the people within its area of authority and the need to promote a sense of belonging and loyalty among all the people of the Federation.

to manage ethnic diversity and minority-majority crisis.¹¹² Nigerian constitution-makers have been stated to regard ethnic communities in the country as right-and-duty bearing entities that can assert the right to self-determination within Nigeria's federal system of government.¹¹³ However, the translation of constitutional principles and provisions into practice depends upon the leadership in government, the political party in government (federal or state), and the actual inclusion of minorities in governmental positions. The federal character, quota and catchment principles were all abused in practice to still favour the educationally disadvantaged Hausa Fulani of the North in federal admissions¹¹⁴ and appointments,

¹¹² Patrick A. Edewor, Yetunde A. Aluko, Sheriff F. Folarin, Managing Ethnic and Cultural Diversity for National Integration in Nigeria, *Developing Country Studies*, Vol.4, No.6, 2014, pp.70-76, at 74. See also: Ukiwo, U. (2005) 'On the study of ethnicity in Nigeria'. CRISE Working Paper No. 12, June 2005; Suberu, R., *Federalism and Ethnic Conflict in Nigeria*, Washington D.C.: United States Institute of Peace, (2001) Press; Adele Jinadu, L., Ethnic conflict & federalism in Nigeria, *ZEF Discussion Papers on Development Policy*, No. 49, (2002), University of Bonn, Center for Development Research (ZEF), Bonn; Eghosa Osaghae, Explaining the changing patterns of ethnic politics in Nigeria, *Journal Nationalism and Ethnic Politics*, Vol. 9, Issue 3, 2003, pp. 54-73; RI Jacob, S Saad, Ethnic conflict in Nigeria: Constitutional law and the dilemma of decision-making, *Malaysia Journal of Society and Space* 7 issue 2, 2011, pp. 28 – 36; Rindap, MR, Ethnic Minorities and the Nigerian State, *IJAH*, Vol.3 (3) July, 2014, pp. 89-101.

¹¹³ Adele Jinadu, L., Ethnic conflict & federalism in Nigeria, *ZEF Discussion Papers on Development Policy*, No. 49, (2002), University of Bonn, Center for Development Research (ZEF), Bonn, p. 27

¹¹⁴ "Although the proportionality principle, entrenched in the 1979 Constitution, assumed equal treatment for all ethnic groups, as opposed to special group preference, administrative action by strategically placed "gate keepers" in the federal public service, has in fact, over the years, had the unintended effect of converting proportionality into special group preference, especially in admission to federal secondary schools. This has been made possible through the use of different cut-off points that favour students with lower scores, from some states assigned lower cut-off points over other students with higher scores from states with higher cut-off points. ... This form of "reverse discrimination" has further fuelled and deepened the ethnic animosities it was intended to contain. As a result, the practical implementation of the federal character clause has

especially under the successive Presidents from the Northern ethnic stock who have tended to favour their majority ethnic group, especially under the Military Heads of State, to the extent that the high-ranking officers of the Armed Forces were those periods predominantly of Northern ethnic extraction. Indeed, the Administration of President Muhammadu Buhari from 2015-2019, has often been accused of making almost all key federal appointments from the Northern Hausa Fulani majority group.¹¹⁵

Some other institutional establishments like the Niger-Delta Development Commission (NDDC) purposed to address grievances of marginalisation in access to national resources and infrastructure development of where the oil and gas wells, the major source of revenue for Nigeria, are located, have not lived up to its envisioned goals and objectives. The insurgency of the militant groups crippled oil and gas production activities and government revenue income, resulting in the "Amnesty

generated controversy, particularly concerning how best it can serve its instrumental conception as a tool for achieving the objective of "diversity in unity." - Adele Jinadu, L., Ethnic conflict & federalism in Nigeria, *ZEF Discussion Papers on Development Policy*, No. 49, (2002), pp. 25-26. See also *Badejo v. Federal Ministry of Education* (1996) 8 NWLR (Pt.464) 15 (SC)

¹¹⁵ "President Muhammadu Buhari's previous and latest round of appointments to federal office has drawn a great deal of criticism, especially across the southern half of Nigeria. The immediate cause of the disenchantment is the ethnic origins of the officials he named to the positions at issue. Their qualifications are not in dispute. But central to the issue in the news media and public discourse, the appointments have been described as "lopsided", as reflecting insensitivity to the plurality of the Nigerian state, and as having stirred up "outrage across Nigeria." Some have even gone to the incendiary length to characterising Buhari as "President of Northern Nigeria." The accusation which was especially from the Southern part of the country accused Buhari of "Northernisation agenda." Social Media was also awash with the Northern Agenda of Buhari. So far, out of the 42 appointments made by the President, 35 are occupied by northerners and this has drawn some concerns." - Eme, OI and RA. Onuigbo, Buhari Presidency and Ethnic Balancing in Nigeria, Conference Paper, 2015 Faculty of the Social Sciences Conference, Nsukka, available at: https://www.researchgate.net/publication/282085768_Buhari_Presidency_and_Ethnic_Balancing_in_Nigeria.

Policy" of the Late President Yar'Adua Administration. The choice of former President Goodluck Jonathan was perceived as an appeasement of the Niger-Delta minorities of the South-south zone, at the peak of one of the existential crisis of Nigerian federation, the Niger-Delta Militancy of several militia groups that declared war on oil producing companies and their employees, oil installations, and Nigerian security forces.¹¹⁶

The constant struggle for power/dominance and conflicts of interests between the major ethnic/tribal groupings of the Hausa/Fulani (in the northern part of the country), Yoruba (southwestern part of the country), and Ibo (south eastern part of the country), on the one hand, and the demands of minority ethnic/tribal groupings in the middle belt, northeast and northwestern part of the country (including the Kanuri, Nupe, Tiv, Idoma, Igala, Junkun, Birom, among others) and those of the south-south geopolitical zone, Niger-Delta Region, (including Bini, Itsekiri, Urhobo, Kalabari, Ijaw, Efik, Ibibio, among others), have impacted negatively on the Nigerian federation.¹¹⁷ The majority and minority ethnic groups¹¹⁸ do organise themselves into various organisations platforms for advocating their group socio-politico-economic interest and agenda. However, they often have Youth wings that also function as their ethnic militia for the deployment and use of force, violence, brigandage, insurgency, inter-ethnic civil war to press home their agenda by any means necessary.¹¹⁹ The

Hausa-Fulani ethnic group of Northern Nigeria have Arewa Consultative Forum (ACF) and its militant wing of Arewa People's Congress (APC), and other smaller interest groupings, as the Fulani pastoralists/herdsmen militia known as Miyayati Allah; the Yoruba ethnic group have the Afenifere and the militia wing of Oodua People's Congress (OPC); the Ibo ethnic group have the Ohaneze and the militia wings of Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) and the Indigenous People of Biafra (IPOB); the Oil producing South-south ethnic groupings of the Niger-Delta have the Ijaw, Urhobo, Itsekiri, Bini, Isoko, Ogoni, Ibibio, Calabari, among others, with various militant militias, such as Niger-Delta People Volunteer Force (NDPVF), Movement for the Emancipation of the Niger Delta (MEND), Movement for the Survival of Ogoni People (MOSOP).¹²⁰

These ethnic groupings within the federation organised into ethno-cultural groups, with activist wings or militias,¹²¹ often press forward their agenda in a macabre dance of tribal jingoism, that take on the spectre of sabre rattling and gun totting or gun-boat "diplomacy", insurgency, civil unrest, brigandage, ethnic cleansing and genocidal killing fields. Often times the ethnic militia groups are utilized for inter-communal

¹¹⁶ C Bassey & F Akpan, Mainstreaming Peace and Security in the Niger-Delta: Resource Control, Ethnic Nationalism and Conflict Cessation in a Turbulent System, *Global Journal of Human Social Science*, Vol. 12 Issue 6, 2012, pp. 13-22

¹¹⁷ Oyelowo Oyewo, Constitutional Law of Nigeria, 2019 2nd Edition (Kluwer Wolters), 4-5. Monica Emmanuel, "Federalism in Nigeria: Between Divisions in Conflict and Stability in Diversity" (2016) Globethics.net Theses No. 20, 37-40 (there are over 250 ethnic groupings in Nigeria).

¹¹⁸ Austine Ikelegbe, State, Ethnic Militias, and Conflict in Nigeria, *Canadian Journal of African Studies*, Vol. 39, No. 3 (2005), pp. 490-516

¹¹⁹ Summary of Judgment of the ECOWAS Court of Justice in the case of Rev. Fr. Solomon MFA & 11 Ors. v. Federal Republic of Nigeria Suit No.: ECW/CCJ/APP/11/16. Delivered on 26th February 2019. The

Court rejected the argument of the Federal Government that what was happening in Benue State was communal clashes between farmers and herders as argued by the FGN and upheld the argument of the Plaintiffs that it was Fulani Herdsmen that were attacking and killing in Benue communities. (This also put paid to the narrative of politicians that Benue people are killing themselves).

¹²⁰ Oyelowo Oyewo, Federalism and Restructuring of Nigeria: Back to the Future, *Nigerian Journal of Contemporary Law* Vol. 19:1, 2013, pp. 99-103

¹²¹ Ethnic militia is essentially a youth based groups formed with the purpose of promoting and protecting the parochial interests of their ethnic groups, and whose activities sometimes involve the use of violence which cannot do good to the unity of the country, and viewed in Nigeria as a militant organisation set up to protect the interest of a particular nationality within the Nigerian federation. See Adejumo, S., Ethnic militia groups and the national question in Nigeria, *Social Science Research Council*, (2002). Retrieved from <http://programs.ssrc.org>

warfare that destroys lives and properties, and this cannot serve any good purpose for the overall unity and development of the Nigerian federation other than to perpetual division, disintegration and possible extinction of the nation-state. It is thus arguable that the escalating activities for the self-determination of 'Biafra People' by the MASSOB and IPOB can be associate with the agitations for secession or restructuring. Such agitations provoke responses from other ethnic groups, particularly from the Arewa Youths Consultative Council under the banner of the Coalition of Northern Groups expressed, for example in a statement that all Igbo citizens should vacate the Northern part of Nigeria by October 1, 2017. The most recent deployment of a military contingent in an operation to quell the MASSOB and IPOB agitations only compounded the issue of ethnic animosity, distrust and conflicts.¹²²

Curiously, the tempo of minority nationalism has moved from demanding states or local government creation to demanding greater political autonomy, control over economic resources, and a greater share of political power and revenue at the centre (self-determination), as evidenced by the uprising and revolts of the minorities of the oil-rich Niger-Delta region, and this shift has been attributed to the precipitate loss of legitimacy by the state, which became increasingly insolvent and repressive in the 1980s and 1990s, as well as to economic crisis, democratisation and globalisation, thereby leading to the important conclusions that without some form of state restructuring as demanded by the minorities and other aggrieved groups, it will become more and more difficult to prevent Nigeria from facing the danger of self-determination nationalism, becoming uncompromisingly separatist.¹²³

¹²² "Arewa Youth Threat", The Nation, June 14, 2017, available online at: <http://thenationonlineng.net/arewa-youth-threat/>

¹²³ Eghosa E. Osaghae, From accommodation to self-determination: Minority nationalism and the restructuring of the Nigerian state, *Journal of Nationalism and Ethnic Politics*, Volume 7, Issue 1, 2001, pp. 1-20

2.1.4. Conflicts, Peace and Security

Section 14 (2) declares "that: (a) sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority; b) the security and welfare of the people shall be the primary purpose of government; and (c) the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution." Security is, therefore, the primary objective of the government of the Nigerian Federation, and this is constitutionally reinforced to powers conferred on the federal/central government to monopolise the use of the armed forces, security agencies, the police, immigration, customs, civil defence organisation, and all other para-military bodies within the federation.¹²⁴ But the theatre of armed conflicts, insurgency, ethno-religious civil war, terrorism/Islamic fundamentalists jihads, herdsmen versus farmers armed conflicts, has spread across almost the whole federation as to pose existential crisis and threat of unravelling the fabric of the Nigerian federation. Peace and security have become a major concern for not only the Nigerian nation state but for the African sub-region and regional bodies of ECOWAS and AU, respectively.¹²⁵

Starting from the first major ethnic conflict that resulted into the Biafra Civil War of 1967-1970, internal armed conflicts have been escalating within the Nigerian federation at alarming rate, scale and spread that the Police, Armed Forces and security agencies are clearly unable to cope with, resulting in constant loss of properties and lives to the extent of it becoming commonplace phenomenon and daily occurrence in the federation. It has been observed that, "Nigeria's national conflict management architecture and security governance

¹²⁴ Sections 214 -219 of the 1999 Constitution as amended.
¹²⁵ Akin Iwilede & Johnson Uchechukwu Agbo, West Africa, *Journal of Regulation of Regional Peace and Security in 2012* - pp. 358-373; *Democracy and Security*, Volume 8, Issue 4, Response, the African Union (AU) Intervention in African States: How Viable Is It? *India Quarterly: A Journal of International Affairs*, Vol 114-128

relies on a complex and overlapping set of agencies that are poorly coordinated, lack strategic direction, are not inclusive or accountable and do not enable cooperation between state and non-state actors. This has prevented early warning and response and often led to heavy-handed, selective action while failing to identify and tackle underlying causes of violence across the country. Nigeria's security forces are often accused of human rights abuses including unlawful killings, arbitrary arrest and detention, extortion, sexual harassment, and disappearances. This leads to mistrust that negatively affects relations between security forces and the civilian population. Furthermore, civilian oversight of security institutions is ineffective and they remain largely unaccountable to civilian elected representatives, ministries and the general public."¹²⁶

Within the Nigerian federation all the geopolitical zones have at one time or the other experienced armed conflict and insecurity to some degree, from the South-south (Niger Delta) militants, to the Northeast Boko Haram war of terrorism, to the North Central Herdsmen versus Farmers conflict, to the North West invasion by armed men, and to the armed banditry in the South West, no part of the Nigerian federation has been spared,¹²⁷ and this has been confirmed by data and information in a 2018 publication of the World Bank and the National Bureau of Statistics, Nigeria.¹²⁸ The conflicts in each of the geopolitical zones of the federation will now be made bare.

¹²⁶ IMPACT REPORT: OUTPUT 1: Security and Governance, Report developed by the Nigeria Stability and Reconciliation Programme. Published September, 2017, pp. 2-3. With an estimated 3,000 conflict-related deaths per year between 2006 and 2011, Nigeria has long been regarded as the most violent country in Africa, amongst those which are not at war.

¹²⁷ 2016 Strategic Conflict Assessment of Nigeria Consolidated and Zonal Reports, Institute for Peace and Conflict Resolution Abuja, first published in 2017.

¹²⁸ Abul aAzad, Emily Crawford, Heidi Kaila, *Conflict and Violence in Nigeria: Results from the North East, North Central, and South-South Zones*, The World Bank & National Bureau of Statistics, Nigeria, 2018, pp. 8-11

2.1.4.1. South-South Geopolitical Zone

The militancy activities of the various Niger-Delta Militia against the government's major sources of revenue in the Niger-Delta Region in the form of bombings, destructions of oil wells, installations, machineries and facilities, to kidnapping of foreign and local staff of oil companies (often times resulting into loss of lives), demanding for ransoms, and engaging in armed conflicts with the military and security forces of the federation, accompanied by insecurity, chaos, mayhem, instability and violence, became the main attribute of the Region until the Administration of Late President Yar'Adua in 2010 brokered the "Amnesty" that brought some respite to decrease pipeline attacks, that was consolidated under the Administration of Former President Goodluck Jonathan.¹²⁹ Although the activities of Movement for the Emancipation of the Niger-Delta (MEND) and Niger-Delta Avengers continued with the launching of attacks that were causing Nigerian oil export to fall in 2015 and 2016,¹³⁰ until the present cease-fire and suspension of armed conflict in the zone. How long this present state of affairs will last will depend to a large extent on how the root causes of conflict are dealt with.

2.1.4.2. Southeast Geopolitical Zone

In the Southeast zone, the conflicts, and civil unrest has come mainly from the Movement for Actualisation of the Sovereign State of Biafra (MASSOB) and the Indigenous People of Biafra (IPOB), which are laying claim to a sovereign state of Biafra, resulting into separatist agitations and inter-group conflicts. The wounds of Biafra and the loss of the Civil War¹³¹ was

¹²⁹ Okumagba, P. Ethnic Militias and Criminality in the Niger-Delta, *African Research Review: An International Multi-Disciplinary Journal*, Vol. 3 (3), 2009, pp. 315-330;

¹³⁰ Abul aAzad, Emily Crawford, Heidi Kaila, *Conflict and Violence in Nigeria: Results from the Northeast, North Central, and South-South Zones*, The World Bank & National Bureau of Statistics, Nigeria, 2018, p. 9

¹³¹ Lasse Heerten and A. Dirk Moses, "The Nigeria-Biafra War: Postcolonial Conflict and the Question of Genocide" (2014) 16 *Journal of Genocide* 169,173. -"Repeated outbursts of violence between June and October 1966 peaked in massacres against Igbos

borne by the Ibos who allege 'marginalisation' and now claim redistributive justice through MASSOB and now IPOB. The response of Arewa Youths Consultative Council under the banner of the Coalition of Northern Groups¹³² that all Igbo citizens should vacate the North by October 1, 2017, pushed the option of secession to the front burner of the crises plaguing the Nigerian federation. It also helped to project as viable the secession option given the seemingly popular or cult-like support for IPOB in Iboland of South Eastern Nigeria. The Federal Government's use of military force to quell the insurrection, declaration of IPOB as a terrorist group, and the arrest and prosecution of the IPOB leadership (especially Nnamdi Kanu) heightened tension, however, his disappearance from the East and, Nigeria, has momentarily taken 'the wind out of the sail' of the IPOB secessionist agitators for now. That is not to say that the campaign and agitation for secession or restructuring by MASSOB and IPOB have ceased.

There are also persistent conflicts between farmers and herders in this zone, with all the scars of such conflicts. The impact of conflicts in the zone is broad, – resulting in loss of lives and property, displacement and the disruption of economic and communal life.¹³³

2.1.4.3. Northeast Geopolitical Zone

The Northeast zone has been the most severely affected by conflict of any zone in Nigeria over the last decade, and the impact of insurgency/terrorism on all aspects of human

living in the Sabon Gari, the 'foreigners' quarters' of northern Nigerian towns. According to estimates, these riots claimed the lives of tens of thousands. This violence drove a stream of more than a million refugees to the Eastern Region, the 'homeland' of the Ibos' diasporic community."

¹³² "Arewa Youth Threat", The Nation, June 14 2017, at: <http://thenationonline.ng/arewa-youth-threat/> accessed on August 20, 2017.

¹³³ 2016 Strategic Conflict Assessment of Nigeria Consolidated and Zonal Reports, Institute for Peace and Conflict Resolution Abuja, first published in 2017, pp. 17-18

security, that is, economic, food, health, environmental, personal, community, social and political security, are apparent, creating an atmosphere of fear, despair and material lack for the displaced and those still in the states in the zone. The state of human insecurity in the zone has not been helped by allegations of sexual exploitation and abuse, levelled against the managers of the camps of the Internally Displaced Persons (IDPs). As shown in Fig. 3 the conflict and violence through insurgency/terrorism are primarily attributable to Boko Haram, the terrorist group responsible for human rights abuses across Nigeria, Chad, Cameroon, and Niger.

The violent radicalisation of the Boko Haram members, and the resulting military operations have reportedly affected nearly fifteen million people since 2009. This conflict has triggered an acute humanitarian and forced displacement crisis, with devastating social and economic impacts on the population, and further deepening underdevelopment and regional inequalities. The most affected states are the Borno, Adamawa and Yobe, as shown in Fig. 3 and Fig. 4. The most affected groups are women, children, and youth. Boko Haram's tactics have included multiple modes of attack, including suicide bombings, seizure and destruction of entire villages, forced displacement, abductions, sexual violence targeting women, and forced recruitment of men. Although Boko Haram-held territory has reduced in size ever since 2015, however, the group continues to perpetrate consistent attacks in the Northeastern states.¹³⁴ More than two-thirds of conflict events in Northeast Nigeria were caused by Boko Haram, and conflict levels peaked in 2014 in the zone but remained relatively high through 2017 and 2018

¹³⁴ Abul aAzad, Emily Crawford, Heidi Kaila, *Conflict and Violence in Nigeria: Results from the North East, North Central, and South-South Zones*, The World Bank & National Bureau of Statistics, Nigeria, 2018, p. 9; 2016 Strategic Conflict Assessment of Nigeria Consolidated and Zonal Reports, Institute for Peace and Conflict Resolution Abuja, first published in 2017, pp. 17-18

Boko Haram-attributed Attacks in Nigeria Since July 2009

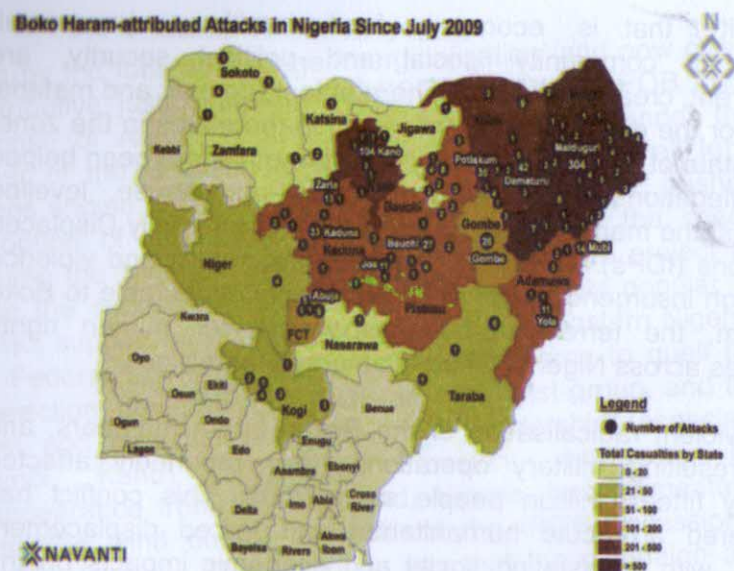


Fig. 3 Source: Researchgate



Fig. 4 Source: Researchgate

2.1.4.4. North-Central Geopolitical Zone

The multi-faceted and complex conflict in the North Central zone has both escalated and expanded as tensions between farmers (agrarians) and herdsmen (pastoral nomadic cattle-herding) groups who come into conflict over land access, compounded by religion and ethnicity – herders are most members of the minority Fulani ethnic group and are generally Muslim.¹³⁵ Farmer-herder conflicts often consist of attacks by one group and subsequent retaliation from the other community. Responses have been largely through the deployment of armed security personnel, commissions of inquiry and humanitarian assistance to those affected by the conflicts. Attempts at prosecuting culprits have often not yielded many dividends. Some states in the zone have also initiated amnesty programmes, akin to Disarmament, Demobilisation and Reintegration (DDR) programmes, as forms of political pardons for warlords, and creation of cattle ranches for the herdsmen.¹³⁶

A coalition of public policy experts has suggested ways to address the lingering violence in Nigeria's livestock farming business. The Nigerian Working Group on Peace Building and Governance in a paper released on January 7, 2019, dissected the historical context of the crisis and recommended solutions that ranged from the creation of new grazing reserves and deployment of modern technology like an electronic chip to track animals. The Group recommended the establishment of grazing reserves to provide the opportunity for practicing a more limited form of pastoralism and is, therefore, a pathway towards a more settled form of animal husbandry. The Group also noted that, Nigeria has a total of 417 grazing reserves out of which only about 113 have been gazetted, as it is clear that at least in the short and medium

¹³⁵ Herders against Farmers: Nigeria's Expanding Deadly Conflict, International Crisis Group Report No. 252/Africa, 19 September 2017, available at: <https://www.crisisgroup.org/africa/west-africa/nigeria/252-herders-against-farmers-nigerias-expanding-deadly-conflict>

¹³⁶ ibid

term, many herdsmen must continue to practice seasonal migration between dry and wet season grazing areas, but ultimately, there is the need for permanent settlement of pastoralists.¹³⁷ It can be observed that in 2016, for example, a legislation was proposed – “A Bill for an Act to establish Grazing Reserve in each of the states of the Federation Nigeria to improve agriculture yield from livestock farming and curb incessant conflicts between cattle farmers and crop farmers in Nigeria” – and thrown out, as most agrarian states of North-Central, Southeast, and Southwest, viewed the establishment of Grazing Reserves as “land grabbing and invasion” of their domain by the Hausa Fulani ethnic/Islamic group. Some have even challenged the whole Grazing Reserve policy as political agenda by the Fulani to continue to extend their stronghold over the federation, by relocating the whole Fulani nomadic tribe of West Africa into Nigeria. Some States have enacted laws or are processing bills to prevent open grazing on their territory. There are four initiatives so far in Benue, Ekiti, Taraba and Edo States. Could such laws be effective in prohibiting pastoralism, which is practised by millions of Nigerians?¹³⁸ The Working Group concludes that a comprehensive approach to address the growing crisis associated with violence affecting pastoralism and farmers in Nigeria is necessary.

Several constitutional and legal issues have been thrown up by the Bills prohibiting pastoralism as practised by the Fulani-Herdsmen, including their right to free movement and to settle in any part of the country, but the counter argument of the Farmers is their right to ownership of their farmlands and farm produce, and that wilful destruction of their farmlands/plants amounts to criminality that the law enforcement agents have failed to protect. In the recent decision of the ECOWAS Court

¹³⁷ How to resolve herdsmen crisis – Nigerian Working Group, January 12, 2018, Premium Times
<https://www.premiumtimesng.com/news/top-news/255364-resolve-herdsmen-crisis-nigerian-working-group.html>

¹³⁸ ibid

of Justice,¹³⁹ the Federal Government was ordered to immediately deploy machinery in the affected areas (Farmlands community in Benue State) and beef up security to forestall further attacks on Benue communities. The Court further ordered that the Federal Government of Nigeria should immediately set up a Commission to enquire into the atrocities committed by Fulani Herdsmen against Benue communities, identify the culprits, prosecute them and take adequate measures to ameliorate the hardship of the victims. Hence the Fulani Herdsmen and Farmers conflicts will require objective and pragmatic approach with the involvement of the stakeholders, for lasting solutions to be implemented. The present situation where the Federal Government is perceived to be pushing more the case of the Fulani Herdsmen than that of the Farmers/Farmland Owners will not augur well for lasting peace and unity, especially as President Muhammadu Buhari, a Fulani man who is a former Patron of Miyiyati Allah and his leading men in Government (of the Fulani ethnic group) are seen to be biased in favour of the cause of the Fulani Herdsmen.

2.1.4.5. Northwest Geopolitical Zone

The tapestry of conflicts of the Northwest geo-political zone is made up of some peculiar and not so peculiar ones, such as indigene-settler conflicts; inter-faith tensions between Muslims and Christians; and intra-faith tension between mainstream Islam and the Islamic Movement of Nigeria (IMN). The herders and farmers conflict is one of the conflicts that are not peculiar to the zone, and others are, intra-faith conflicts that also persist amongst Islamic sects in states in the zone. The Northwest perhaps comes next as the most terror-affected zone in Nigeria, after the Northeast, as the immediate neighbour of the Northeast geo-political zone.¹⁴⁰

¹³⁹ Judgment of the ECOWAS Court of Justice in the case of *Rev. Fr. Solomon MFA & 11 Ors. v. Federal Republic of Nigeria* Suit No.: ECW/CCJ/APP/11/16. Delivered on 26th February 2019.

¹⁴⁰ 2016 Strategic Conflict Assessment of Nigeria Consolidated and Zonal Reports, Institute for Peace and Conflict Resolution Abuja, first published in 2017, pp. 17-18

2.1.4.6. Southwest Geopolitical Zone

The Southwest geo-political zone, is in general and on comparative terms with the other geopolitical zones, with the lowest accounted incidences of violent ethnic conflicts in recent times. Notwithstanding, there are several communities therein seemingly containing conflicts that have become protracted, and the theatre of armed conflict in contiguous zones often times spill over into the Southwest zone from other neighbouring zones especially, the herdsmen versus farmers conflicts. And other criminal activities of brigandage, kidnapping, farmland destruction and destruction of properties and lives.

2.1.5. Peace and Security Challenges

Research and data available on armed conflicts and insecurity support the proposition that conflict and violence in Nigeria cannot be addressed with a single, one-cure approach across different geopolitical zones, as patterns of conflict incidence, type of event, cause, and consequence of event vary widely in each area of the country.¹⁴¹

The conflicts and insecurity incidences are often accompanied by displacement of persons in the areas of conflict, causing the phenomenon of large population of Internally Displaced Persons (IDPs) under a democratic government, which requires concerted plans and strategy to handle effectively because of the human insecurity issues attendant with the phenomenon, especially in the Northeast, North-Central, and Northwest zones. The current legal and institutional framework for dealing with IDPs falls far short of humane treatments of Nigerian citizens. Moreover, the displacements often bring about social and economic disequilibrium that sucks the IDPs into the vicious circle of poverty, underdevelopment and hopelessness.

¹⁴¹ Abul a Azad, Emily Crawford, Heidi Kaila, *Conflict and Violence in Nigeria: Results from the Northeast, North-Central, and South-South Zones*, The World Bank & National Bureau of Statistics, Nigeria, 2018, pp. 43-44

The State actors in keeping peace and security within the Nigerian Federation, including the Nigerian Armed Forces, Police, and the various security agencies and outfits have often times failed woefully in discharging the constitutional responsibility of safeguarding the "security and welfare of the people", mainly due to out-dated security structure and master-plan, lack of an integrated cooperative security and policing methodology, lack of accountability, corruption, and bias. There is an urgent need for a constitutional and legal overhaul of the framework of the Nigerian Armed Forces, institutionally, strategically, human capital development, capacity building, equipment and hardware, transparency and accountability in procurement, and civilian oversight.¹⁴² We advocate for an "Integrated Federation Security Master Plan" regime that will involve concentric frameworks of federal, zonal, state, local government, ward, and community security strategies, initiatives and actions that will mobilise prompt and effective response and proactive interventions for dynamic and effective security and peace maintenance within all areas of the federation. The modern demands of provision of security in a federation must necessarily involve synergised and inclusive approach along the lines of the "homeland security" constitutional and legal regime and policy of the United States of America.

More specifically, the constitutional and legal framework of policing within the federation needs a rethink of the present colonial originated Nigerian Police Force. Various arguments have been proffered for and against State Policing, however, since the present Nigerian Police Force has failed woefully to provide effective and sustainable policing framework for Nigeria, other alternatives such as state, regional, zonal, and community policing must be considered in the mix for ensuring the security and welfare of citizens through modern and effective methodologies of policing.

¹⁴² Henrik Persson, *Nigeria – An Overview of Challenges to Peace and Security*, FOI, February 2014, pp.18-19

A sore point in relation to internal security and armed conflicts is the proliferation of small arms and light weapons in the hands of non-state actors and disputants. The phenomenon of openly carrying arms and ammunition without being legally licensed to do so is one of the sources of impunity in revenge killings and counter killings in the North-Central and Northwest zones. The Fulani Herdsmen and Farmers' armed conflicts and the killing fields arising from a vicious circle of revenge and counterattacks are traceable to the proliferation of small arms and light weapons. The legal framework relating to firearms and security in Nigeria based on the Firearms Act, 1959, and related statutory enactments has become antiquated and in need of complete overhaul. The Armed Forces, Police and other security outfits must be empowered to ensure that only authorised persons lawfully carry arms, and must be able to disarm or arrest such persons that are not so authorised to carry arms. Consistent and persistent surveillance and detection of unauthorised possession of arms must be in place to deal with the easy access to arms and ammunition and the proliferation of small arms and light weapons.

A recurrent factor in the conflict and violence, especially in the Northeast, North-Central, and Northwest zones, is the porosity of our borders to foreign elements in terrorism, insurgency and armed conflicts in the federation. The implications of the lack of effective security at our Borders to check the incessant inflow of criminal element and other unwanted immigrants into the country go beyond conflicts into population explosion, planning and development in Nigeria. Secure Borders will heighten internal security, peace and stability within the federation. It is therefore imperative for the Immigrations, Customs, Civil Defence Organisation, and all interior organisations to be overhauled constitutionally and legally for a more effective framework and the regime of internal security in Nigeria.

Use of data, technology and artificial intelligence has for some obscure reasons been almost non-existence in the approach

to resolving conflicts and securing peace and stability, by all the various state actors. Although the National Identity Programme has not been fully implemented, however, there are other data repositories such as INEC, Police, Immigration, Customs, Banking Industry, and Telecommunications, that need to be harvested, harmonized and deployed for effective use in tracking and profiling non-state actors in conflict, particularly, non-citizens or foreigners from neighbouring countries. The idea of having an integrated database and records of all persons and related activities was recommended by the National Conference¹⁴³ and it is imperative that this laudable idea be implemented by the National Assembly through the enactment of appropriate legal framework its materialisation.

2.1.6 Nation-State Building Challenges

Conceptually, state-building has been distinguished from nation-building, same as a state is distinguishable from a nation.¹⁴⁴ As earlier discussed, the Nigerian State is a colonial creation, while the Nigerian nation has for the most part been a constitutional entity the actualisation of which is an on-going enterprise. The idea of a Nigerian nation-state, therefore, presents a complex and intriguing dilemma the analysis of which cannot be confined within the realm of constitutional law or public law for that matter. Albeit, our primary focus being in the area of constitutional law and public law, will dictate the focused constitutional approach to such complex subject as the challenges of state-nation building in the Nigerian federation.

¹⁴³ National Conference Report 2014, p. 106 - 109

¹⁴⁴ Alberto Alesina & Bryony Reich, Nation Building, 2015, available at: https://scholar.harvard.edu/files/alesina/files/nation_building_feb_2015_0.pdf - We define "nation-building" as a process which leads to the formation of countries in which the citizens feel a sufficient amount of commonality of interests, goals and preferences so that they do not wish to separate from each other. State-building and nation-building have sometimes been used interchangeably. However, state-building generally refers to the construction of state institutions for a functioning state, while nation-building the construction of a national identity, also for a functioning state.

The aspiration for nation-building in Nigeria is affirmed in the preamble to the 1999 Constitution thus:

Having firmly and solemnly resolved, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding.

And to provide for a Constitution for the purpose of promoting the good government and welfare of all persons in our country, on the principles of freedom, equality and justice, and for the purpose of consolidating the unity of our people.

Moreover, the idea of state building is substantively constitutionalised in section 2(1), "Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria", and in section 2(2) that "Nigeria shall be a Federation consisting of States and a Federal Capital Territory". Basically, it must be understood that 'state-building' focuses on the practical task of building or strengthening state institutions, while 'nation-building' is more concerned with the character of relations between citizens and their state.¹⁴⁵ The objects of nation-building often incorporates state-building,¹⁴⁶ with the additional objective of integrating

¹⁴⁵ Francis Fukuyama (ed), *Nation-Building: Beyond Afghanistan and Iraq*, Baltimore: The John Hopkins University Press, 2006; Francis Fukuyama, *State Building, Governance and the World Order in the Twenty First Century*. London: Profile Books, 2004; Sinclair Dinnen, *Nation-Building – Concepts Paper*, available at: <http://www2.pazifik-infostelle.org/uploads/DossierNationBuilding.pdf>

¹⁴⁶ "The object of 'nation-building' from a development perspective can be said to comprise three related elements:

(a) Firstly, the development of an effectively functioning state that is accepted – that is, accorded legitimacy – by the bulk of its citizens. Central to this are the functions of securing a monopoly of force, guaranteeing security for the population and neighbouring countries, the rule of law, and the provision of public assets. These are fundamental attributes of statehood and – although not the full story – constitute a necessary foundation for 'nation-building'.

diversity to achieve unity, expressed as "unity in diversity", a fundamental objective of adoption of federal principles in any state, with plural and diverse nationalities within the state, as is often the case with states that are creation of colonial rule, like the Nigerian federation. Thus, the Nigerian federation is the structure of the State in which the nation-building is to be processed, as such the State institutions for the administration of governmental powers for the security and welfare of the citizenry is germane to nation building. One may then ask, what institutional framework can then be connected to state-building towards nation-building in the Nigerian federation?

2.1.7. Democratic Governance

The first clue to our question is given in section 14(1) of the 1999 Constitution that provides that the "Federal Republic of Nigerian shall be a State based on the principles of democracy and social justice", before declaring in section 14(2)(a) that 'sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.' Democratic governance thus declared is an essential institution of the Nigerian federation in state-building at the minimum. However, the African, especially Nigerian, experience since independence, demonstrates that nation-states are confronted with a paradox, as, on the one hand, law

(b) Secondly, 'nation-building' also requires a physical, social and communications infrastructure that is shared by the entire civil society. These assets must be accessible for all groups of the population and be used by them for transactions and communication. It is difficult to build a sense of nation in a country containing regions or areas whose inhabitants are effectively cut-off – physically and socially – from the rest of the 'national' population.

(c) In addition to these conventional 'state-building' components, 'nation-building' further presupposes a socio-cultural structuring and integration process leading to shared characteristics of identity, values and goals. It is not so much the homogeneity of these characteristics that is crucial, rather it is the acceptance and toleration of heterogeneity and the facilitation of inclusion." – Sinclair Dinnen, *Nation-Building – Concepts Paper*, available at: <http://www2.pazifik-infostelle.org/uploads/DossierNationBuilding.pdf>

and democratic governance when properly and effectively deployed produces stability, security, social justice, and development, but on the other hand, law and democratic governance in the absence of rule of law, constitutionalism and good governance, will eventually result in a government plagued with corruption, poverty, insecurity and underdevelopment.¹⁴⁷ Since 1st October 1960 till date democratic institutions, governance and values, are yet to be firmly established within the Nigerian Federation.

An essential aspect of democratic governance is the nature and quality of the political parties and political leadership within the State. Since the current democratic State was established by the 1999 Constitution (as amended), the political parties like those before them have been sustained by tribal or ethnic allegiance. The majority ethnic groups' presence in political parties have often followed tribal/ethnic lines, as exemplified by the pattern of voting in the recent presidential elections of February 2019, the result of which revealed massive vote support for President Muhammadu Buhari, a Fulani man, of the All Progressive Congress (APC) by the predominantly Hausa-Fulani Northwest and Northeast, on the one hand, and massive vote support for the Atiku/Obi Presidential Team, Fulani-Kanuri/Ibo, of the Peoples' Democratic Party (PDP), by the predominantly Ibo Southeast and South-South. The Southwest voting also predominantly went to the APC, seemingly in sympathy with their kindred, Professor Yemi Osinbajo, the Vice-Presidential Candidate of the APC. Thus, the ethnic/tribal politics in the Nigerian federation has been inimical to the fostering of viable all-inclusive political parties that are ideology driven for state building and national development. The political parties in Nigeria are lacking in: clear cut ideological content and policies; inclusivity in membership and participation; gender balance; transparency and accountability; *inter alia*. The Electoral Reforms Committee (ERC, "Uwais Panel") made far-reaching

¹⁴⁷ L Diamond, "The State of Democracy in Africa", in *Democratization in Africa: What Progress Towards Institutionalization?* Conference Report CR 2008-01 (National Intelligence Council, 2008) p.7.

recommendations on the reforms of the political and electoral system within the Nigerian federation that ought to have been implemented,¹⁴⁸ and can still be implanted for the sake of deepening democratic governance in Nigeria.

2.1.8. Corruption

Graver still is the impact of corruption on democratic governance within the federation with its attendant negative impact on nation-building and national development. Since the 1999 Constitution came into operation, anti-corruption has been one of the cardinal principles and objective of each successive administration from Former Presidents Obasanjo, Late Yar'Adua, Goodluck Jonathan, up until Muhammadu Buhari. Former President Olusegun Obasanjo made anti-corruption one of the policy thrust of his administration, and this was backed by law reforms in the enacting of the Independent Corrupt Practices Commission (ICPC) Act 2000, the Economic and Financial Crimes Commission (EFCC) Act, 2001. The EFCC began to make an impact with a number of high-level prosecutions, and between 2005 and 2008 convictions increased from 20 to 200 and assets recovered rose from \$1 billion to \$5 billion. During the Administration of Late President Umaru Yar'Adua, the Nigeria Extractive Industries Transparency Initiative Act 2007, the Public Procurement Act 2007, and the Fiscal Responsibility Act 2007 were passed to bolster the anti-corruption legal regime, however, the prosecution of high profile corrupt politicians reduced drastically. When former President Goodluck Jonathan came into office, both the EFCC and the ICPC anti-corruption campaign became low-keyed, and the prosecution and conviction of high profile corrupt official became a rarity even in the face of daily exposure of massive corrupt activities under the Jonathan Administration.¹⁴⁹ Not surprising, President

¹⁴⁸ Report of the Electoral Reform Committee, Volume 1, Main Report, December 2008, available at: <http://ele.ng/wp-content/uploads/2014/03/JusticeMohammedUwaisReport.pdf>

¹⁴⁹ EFCC, Courts, and the Prosecution of Corrupt Politicians, by Ayorinde Oluokun, accessed at: <http://www.nigeriavillagesquare.com/guest-articles/efcc-courts-and->

Muhammadu Buhari rode to power on an anti-corruption campaign and immediately swung to action by exposing mind-boggling quantum of corruption under the Former President Goodluck Jonathan Administration, with prosecution and conviction of high profile public officials. However, the decamping of some high ranking public officials from the former ruling party PDP to the ruling Party APC with consequential "immunity" from prosecution for corruption has raised the spectre of double standard in the usage of the anti-corruption agencies, especially the EFCC, ICPC, and Code of Conduct Bureau and Tribunal, in prosecuting the anti-corruption campaign. Moreover, various international indexes have indicated that the level and depth of corruption has now waned within the Nigerian federation.¹⁵⁰

Sadly, corruption like the armed conflicts, earlier discussed, pose to the federation existential crises that threaten the existence of the Nigerian State. The scourge of corruption on the nation-state building is so grave as to leave the Government of the Nigerian Federation with no choice than to continue to pursue the anti-corruption campaign in one form or the other. While the objective of anti-corruption is seen as altruistic, the ways and means or methodology of the Government may be suspect. Hence, opinions are split on the dramatic face-off between the executive and the judiciary under the Administration of President Mohammadu Buhari, with "anti-corruption operations" "stings" and "stunts" by security operatives against judicial officers of the apex court. And most recently, against the Chief Justice of Nigeria, Walter Onnoghen CJN, who in an unprecedented and blitzkrieg manner, has been charged before the Code of Conduct Tribunal, that "speedily" ordered the CJN's suspension. This has no doubt opened a new chapter in the anti-corruption

prosecution-of-corrupt-politicians-an-update.html; DU Enweremadu, *Anti-Corruption Campaign in Nigeria (1999-2007): The Politics of A Failed Reform*, West Africa and Society Series, Vol. 1 (published by African Studies Centre, 2012)

¹⁵⁰ Oyelowo Oyewo, *Modern Administrative Law and Practice*, (2016, University of Lagos Press), pp. 187-206

campaign in Nigeria, whether for good or bad, due to the perceived selective and intimidating use of the anti-corruption campaign in Nigeria. Albeit, the unfolding jurisprudence¹⁵¹ will be most instructive for state-building in the Nigerian federation. Corruption is no doubt a bane of democratic governance in Nigeria and the scourge of development in the Nigeria federation. Insightfully, in a 2017 UNODOC and NBS Report, described as the first comprehensive nationwide household survey on corruption to be conducted in Nigeria and in Africa at large, which covered all States of the Federation, including the Federal Capital Territory, the Report provided very valuable and reliable information, that will no doubt support the national efforts in reducing the menace and blocking loopholes in all sphere of our public services in the federation.¹⁵²

The prosecution and conviction of corrupt officials and recovery of illicit assets must, therefore, be vigorously pursued without partiality and favouritism. What is good for the goose is good for the gander, and "what is good for the judiciary is good for the executive (especially the President's men who have held public offices and were obviously enriched therefrom) and the legislature, at all levels of the Nigerian federation", in the fight against corruption. Section 15(5) places a duty on the State to "abolish all corrupt practices and abuse of power."¹⁵³ The Supreme Court in *Attorney General, Ondo State v. Attorney General, Federation*, in validating the constitutionality of the ICPC Act, stated per Uwais CJN that, corruption "is not a disease which afflicts public officers alone but society as a whole. If it is, therefore, to be eradicated effectively, the solution to it must be pervasive to cover every segment of the

¹⁵¹ *Hon. Justice Hyeladzira Ajiya Nganjiwa v. Federal Republic of Nigeria* (2017) LPELR-43391(CA)

¹⁵² Corruption in Nigeria Bribery: public experience and response 2017 UNODOC & NBS, https://www.unodc.org/documents/data-and-analysis/Coronestatistics/Nigeria/Corruption_Nigeria_2017_07_31_web.pdf

¹⁵³ Oyelowo Oyewo, *The Legality of Executive Order No. 6, 2018 on Asset Recovery in Nigeria*, *Journal of Law, Policy and Globalisation*, Vol. 81 2019, pp. 1-17

society."¹⁵⁴ With the renewed mandate won at the polls in February of 2019, it is hoped that President Buhari's prosecution of the war against corruption will be without fear or favour to all corrupt public officials irrespective of their political alignments or their location in the arms of government!

2.1.9. National Integration

It has been observed that the shaping of nations throughout most of the developing world has occurred on the basis of political, rather than ethnic, communities,¹⁵⁵ and this is true of the Nigerian federation, as such creating a sense of shared community in these circumstances require the integration of different groups through the infusion of a common language and culture, and it also need the development of a common consciousness and a common political project concerning the future. Section 15(1) of the 1999 Constitution states that, the 'motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress," accordingly, national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties shall be prohibited.¹⁵⁶ Section 15(3) (a)-(d), (4), & (5), instructively, provides as follows:

- (3) For the purpose of promoting national integration, it shall be the duty of the State to:
 - (a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation;
 - (b) secure full residence rights for every citizen in all parts of the Federation;
 - (c) encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties; and
 - (d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious and or other sectional barriers.
- (4) The State shall foster a feeling of belonging and of

¹⁵⁴ (2002) 9 NWLR (Pt. 772) 222; (2002) 6 SC (Pt. 1) 1 (SC)

¹⁵⁵ Sinclair Dinnen, Nation-Building = Concepts Paper, available at: <http://www2.pazifik-infostelle.org/uploads/DossierNationBuilding.pdf>

¹⁵⁶ Section 15(2) of the 1999 Constitution (as amended)

involvement among the various people of the Federation, to the end that loyalty to the nation shall override sectional loyalties.

- (5) The State shall abolish all corrupt practices and abuse of power.

In the light of these laudable constitutional provisions the crux of the matter in the state/nation-building processes in the Nigerian federation, is whether integration is being accomplished towards the establishment of a nationalistic fervour for unity in diversity? Or is it that, to borrow a phrase from Chinua Achebe, "things fall apart and the centre cannot hold"? Is there any possibility of achieving 'national integration within the context of the present practice of federal principles in Nigeria? From our earlier discussions on minority-majority relationships, access to power, ethnic conflicts, democratic governance, and political parties, the federation in its present state is probably further away from integration than it was at Independence on 1st October 1960.

Ethnicity, tribalism and religious bigotry/extremism, are the bane of national integration, with resultant war of religious extremism/terrorism being waged by the Boko Haram in the North-east zone, indigene versus settlor or herdsmen versus farmers armed conflict in the North-Central zone, secessionist insurgency in the Southeast, resource control and management grievances induced belligerency and insurgency in the South-South, and disputation on law and religion in public places in relation to hijab in public institutions in the Southeast. These are not the picture of national integration as painted by the constitution, and have already been dealt with above under paragraph 5.4 above.

Emphasis must however, be placed on the adverse role of religion in national integration in the federation,¹⁵⁷ especially,

¹⁵⁷ Religious extremism breeds religious intolerance, hatred, violence, and destruction of life, property, communities, societies, and nation-states, as exemplified by the constant state of religious violence, destruction and warfare in the Middle East and North Africa. In a recently published work of IT Sampson,¹⁵⁷ on religious violence, the

the adoption of the Sharia legal system in Zamfara State and 14 other Northern States, in the face of section 10 of the 1999 Constitution that advances secularism with respect to religion in Nigeria. The judicial pronouncements on the matter, particularly at the Court of Appeal,¹⁵⁸ have either avoided the constitutional issues arising from the implications of section 10 of the 1999 Constitution or employed technicalities to resolve the issue without any robust jurisprudential discuss.¹⁵⁹ One cannot but agree the more with the well deliberated and rational position of the National Conference 2014, that religion and state be as far as practicable be separated and in spheres where religion has intruded into State affair there be a push-back.¹⁶⁰ Religion has its proper place in human life and society at large but it must not be allowed to be used as a divisive instrument that is antithetical to national integration.

2.1.10. Existential Crisis of Poverty

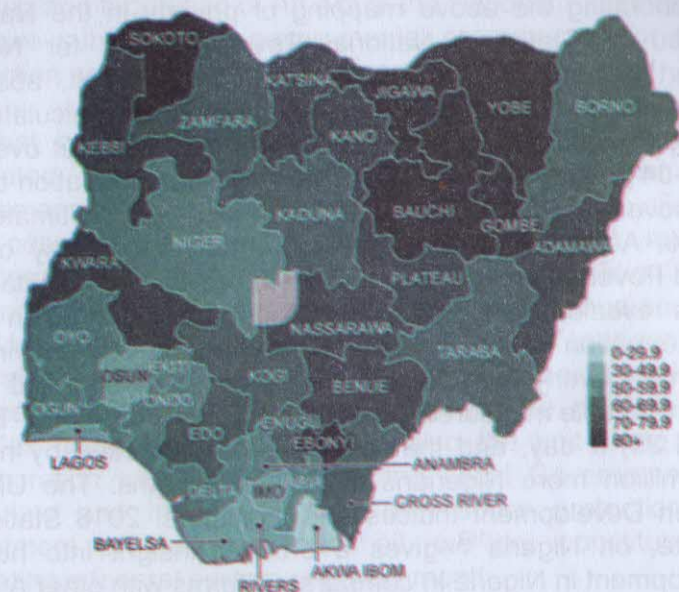
Poverty is an existential crisis which poses a threat to the existence of the Nigerian federation. Figs. 5 & 6 present graphic picture of the poverty rate and landscape of poverty using senatorial districts respectively.

staggering number of the national incidences of religious violence, 1999-2012, were presented, which were adapted and improved upon to extend till November 21014 by Wikipedia, for analytical appreciation of the devastating impact of religious violence on national development and nation-building. Sampson deduced that there were several causal diagnoses of religious conflicts in Nigeria, but much of the literature on the topic paid premium attention to the underlying socio- political, economic and governance factors that precipitate, not only religious, but violent conflicts generally. IT Sampson, "Religious Violence in Nigeria: Causal Diagnosis and Strategic Recommendations to the State and Religious Communities" *African Journal of Conflict Resolution* (2012) 107 – 112, http://en.wikipedia.org/wiki/List_of_massacres_in_Nigeria#cite_note-36; J. Haynes, "Islamic Militancy in East", *Third World Quarterly*, Vol. 26 No.6 (2005) 1321-1339

¹⁵⁸ *Yunana Shibkai & Ors. v. Attorney General of Zamfara State & Anor.* (2010) LPELR-4956(CA); *Abdulkareem v. LASG* (2016) 15 NWLR (Pt 1535) 177

¹⁵⁹ Oyelowo Oyewo, *Introduction to Fundamental Rights Law and Practice in Nigeria*, 2019, Chapter 7.

¹⁶⁰ National Conference Report 2014, supra, pp. 329-330



Source: Nigeria National Bureau of Statistics

Fig. 5: Poverty Rates in Nigeria

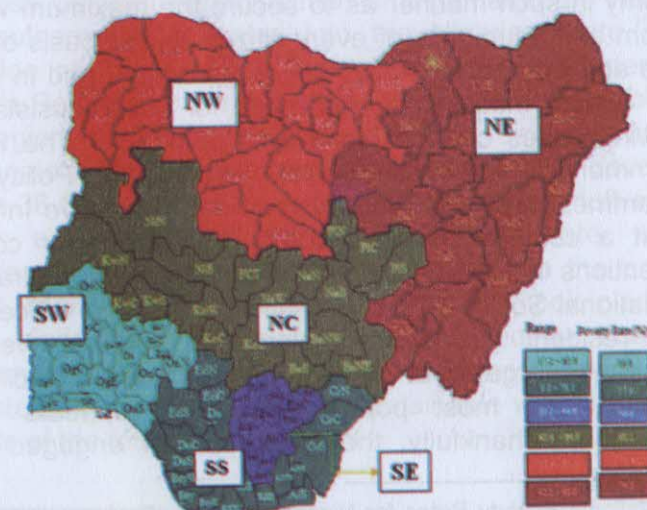


Fig. 6: Landscape of Poverty Using Senatorial Districts

Corroborating the above mapping of poverty in the National Bureau of Statistics' National Poverty Rates for Nigeria Report¹⁶¹ in which the results show that overall, absolute poverty incidence using per capita approach was calculated as 62.6% in 2009-10. This shows a slight improvement over the 2003-04 poverty rate when the fraction of the population below the poverty line for per capita approach was estimated at 64.2%. According to available current data courtesy of the World Poverty Clock, a web tool produced by World Data Lab, it was revealed in June 2018 that Nigeria had overtaken India as the nation with the highest number of people living in extreme poverty across the world, with an estimated 86.9 million people measured to be living on less than \$1.25 (N381.25) a day, and that number has increased by nearly four million more Nigerians in just six months. The UNDP, Human Development Indices and Indicators: 2018 Statistical Update, on Nigeria¹⁶² gives a broader insight into human development in Nigeria in comparative terms with other African countries, and the picture is equally gloomy.

Interestingly, section 16(1) of the 1999 Constitution makes it the responsibility of the federation to "control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity", and in section 17(1) "ensure that provision is made for public assistance in deserving cases or other conditions of need". The Federal Government's National Social Protection Policy and Programmes have been mostly rooted in Executive Initiatives without a comprehensive statutory framework for concrete interventions in poverty alleviations and eradication strategies. The National Social Investment Office under the Office of the Vice President has been implementing social investment programmes targeted at granting access to credit facilities to the poor, the most popular of which appears to be 'TraderMoni'. Thankfully, the Office is now engaged in the

¹⁶¹ National Poverty Rates for Nigeria: 2003-04 (Revised) and 2009-10 (Abridged report)

¹⁶² http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/NGA.pdf

Drafting and facilitation of An Act of the National Assembly that will give substance to governmental programmes for social protection and investment of the poor.

Be that as it may, the eradication of poverty cannot be legislated into reality, rather it takes political will, statesmanship, and genuine care for the governed, to alleviate and possibly eradicate poverty in Nigeria. The revenue sources of the Federation call for diversification from dependence on oil revenue to other non-oil revenue sources. The Unit States and Local Governments' over-dependence on federal government allocations will need to be re-evaluated and replaced with more sustainable revenue portfolio, that enables not only the federal but also the unit State or in collaboration with other States, and Local Governments, to formulate and implement their own social protection and investment programmes, after all, we are constitutionally operating a federal system of government!

2.1.11. The Viability of the Unit States and Local Government

Noting that it was for economic and sustainability reasons that the British Colonial Administration amalgamated the Northern and Southern Protectorates into the Nigerian state,¹⁶³ the devolution into three regions federation, Western, Eastern and Northern Regions, under the 1951 Constitution, the viability of each region, based on its resources was fairly guaranteed. Unfortunately, the rationale and principles of further devolution into the 36 States structure federation, must have left out the viability and sustainability of each unit state without dependence on the federal government, due to the era "Oil Money" in which the creation of the States took place. Oil shocks and global recession has resulted in economic downturn for the federation, and it is now clear that most of the unit states are neither viable nor sustainable without revenue largesse of the federal government.

¹⁶³ Oyelowo Oyewo, Constitutional Law of Nigeria, 2019, Wolters Kluwer, pp.

Data from the National Bureau of Statistics on Internally Generated Revenue at State Level in 2018¹⁶⁴ paints a very gloomy picture, and the summary of which is that the "Q3 2018 States and FCT IGR figure hit ₦264.38bn compared to ₦279.78bn recorded in half year 2018. This indicates a negative growth of -5.08% quarter on quarter. Seventeen (17) States recorded growth in IGR while twenty (20) states recorded a decline in IGR quarter on quarter at the end of Q3 2018. The net FAAC allocation in Q3 2018 is put at ₦1.82 trillion while the total revenue available to the states is put at ₦2.72 trillion. However, the value of foreign debt stands at \$4.22bn while domestic debt hits ₦3.38 trillion at the end of 2018 half year respectively." Clearly, all is not well with the unit states, as most of them have to be granted aids by the Federal Government to even pay the backlog of salaries, talk less of embarking on capital projects for the development of the states and their citizens. This has a direct bearing on the growth rate of poverty, rural urban migration, ethnic conflicts and violence, crime rate, insurgency and terrorism. Implicitly, the creation of more States can no longer be a feasible national structural engineering to the federation.

What appears to be feasible is to "reconfigure" the states into viable and sustainable units, using the geo-political zones formula, or to create regional integration, on a "consociational federalism" principle as is done in Ethiopia, or along the same reasoning, to create geo-political zones for socio-economic and developmental integration, as is being proposed by the Yorubas of the Southwest, using their pre-existing regional Oodua economic model structure, the Arewa politico-economic structure, and the South-South economic integration of Bayelsa, Rivers, Akwa-Ibom, Cross-River, Edo and Delta (BRACED) Commission model. The Ohaneze model of the South-East is more political than economic, hence one recommends to the South-East zone that boasts of the most viable entrepreneurial potentials in the federation to establish

¹⁶⁴ Internally Generated Revenue At State Level (Q3 2018) Report, February 2019, pp. 2-39

an economic model of integrational regional collaboration within the federation, instead of the pursuit of the creation of Southeast Development Commission by the Federal Government. Indeed, every geopolitical zone must come up with socio-economic models to foster viability and sustainability economic integration models for sustainable development. Unit States in a functional federation are not only autonomous in their governance but are viable research laboratories for sustainable federal principles practices that foster security, welfare (instead of warfare) and development of the people.

To borrow from Martin Luther King, "I have a dream" of the return of the groundnut and cotton pyramids in the North, cocoa pyramids in the West, palm oil flowing in the South-South, Rubber Plantations in the Southeast, Industrial revolution taking place all over the federation, constant supply of electricity, eradication of poverty, armed conflicts, crimes, and corruption. I have a dream!

2.2. Counter Propositions and Narratives

There are scholars that hold the view that the Nigerian federation has significantly attained most of the ends and mechanisms that scholars of institutional design in divided societies associate with the effective federalist management of ethnic conflict.¹⁶⁵ This has been succinctly expressed by Suberu thus:

For all its tribulations and failures, Nigeria must be acknowledged as a relative political success in avoiding the tragedy of state collapse or large-scale internal insurgency that has recently convulsed other African states like the Democratic Republic of Congo, Somalia, Sudan, Burundi, Liberia, Sierra Leone and Cote d'Ivoire. This outcome is largely reflective of the genius of Nigerian federalism in curbing ethnic domination, dispersing or decentralising sectional conflicts, promoting interregional revenue

¹⁶⁵ Donald Horowitz, *Ethnic Groups in Conflict*, 1985, Berkeley: University of California Press; Crawford Young, *The Politics of Cultural Pluralism*, 1976, Madison: University of Wisconsin Press.

redistribution, fostering interethnic integration, and generally defusing and subduing the combustible pressures inherent in the country's ethno-linguistic, regional and religious fragmentation.

But the preponderance of scholarly writings¹⁶⁶ propagates contrary view of the Nigerian federation, and there are counter-narratives and conceptual propositions for the reforms of the present Nigerian federation, in face of the unresolved National Question issues, escalating armed conflicts, insurgency and insecurity with the attendant impacts on life and properties, systemic and endemic corruption, existential crisis of poverty, and seeming weakness of democratic institutions and practice.

2.2.1. "True Federalism"

The term "true federalism" is, in essence, the postulation of strict adherence to the principle of federalism not only in constitutional adaptation but also in the structural and operational practice of federalism in any federation. True federalism is, therefore, a proposition for the respect for the sovereign authority of each tier of government in a federation in order to avoid constitutional or practical over-centralisation of sovereign power and control over revenue/resources. As James Madison put it, a true federation comes into being through the 'unanimous assent of the several states that are parties to it', each state being considered 'a sovereign body, independent of all others, and only bound by its own voluntary act', accordingly, a genuinely federal arrangement between states will preserve the fundamental principle of their sovereign equality.¹⁶⁷

Proponents of true federalism in Nigeria assume the existence of "false federalism" in the present constitutional arrangement

¹⁶⁶ Richard Joseph, Africa: States in Crisis, *Journal of Democracy* 14 (3): 2003, 159-170; Larry Diamond, Foreword to *Federalism and Ethnic Conflict in Nigeria*, by Rotimi Suberu, 2001, Washington, DC: United States Institute of Peace Press p. xv

¹⁶⁷ James Madison, "The Federalist No. 39" (1788), in Clinton Rossiter (ed), *The Federalist Papers* (New York, American Library, 1961).

and political practice of the Nigerian federation. Hence the agitation for true federalism in Nigeria "is precisely the point that it is false to identify what we are practising in Nigeria as federalism, it is 'false federalism'." Accordingly, it has been argued that "the logic and authenticity of true federalism specifically derives its meaning from the Nigeria context where we wrongly and falsely identify the reality of quasi-unitary practice as federalism." True federalism is therefore essentially a derivative of federalism as a concept. It is also referred to as fiscal federalism. This deals essentially with how revenues are generated and distributed among federating units in a federation, an issue that has proven to be highly emotive and touching in Nigeria,¹⁶⁸ as earlier discussed.

In summation, the protagonists of 'true federalism' in Nigeria view the constitutional structure, distribution of power and resources, between the central government and federating units as un-federal when benchmarked against the principle and essence of federalism.¹⁶⁹ In fact, the Nigerian federation is seen as an epitome of "false federalism", that is over-centralised and tending more towards the antithesis of a federal system, that is, a unitary system. The anomalies and defects in the constitutional and operational framework of the Nigerian federation are accordingly what makes it "false federalism" as opposed to "true federalism".¹⁷⁰ Not surprisingly, true federalist proponents are all in support of decentralisation and/or restructuring of the Nigerian federation as presently structured under the 1999 Constitution.

¹⁶⁸ *Ibid.*

¹⁶⁹ Dele Adesina, "Nigeria: A Case for True Federalism", *Nigeria Today*, 2017 Jan 9, at: https://www_nigeria_A Case for True Federalism — Nigeria Today.html. "One of the critical elements of true Federalism, which we have violently compromised, is fair sharing of powers between the centre and the component units that make up the Federation. It has been argued over and over again that there is over-concentration of powers at the centre. The centre has been grabbing power steadily since 1960, resulting in an overwhelming dominance of the Federal Government over the federating units."

¹⁷⁰ Sagay, *supra* n 3.

2.2.2 "Decentralisation"

It has been observed that, "from Montesquieu to Madison, classical theorists suggest that decentralised governance has many advantages, especially (i) for democratic participation, representation, and accountability; (ii) for public policy and governmental effectiveness; and (iii) for the representation and accommodation of territorially based ethnic, cultural, and linguistic differences." In particular, it is argued that the transfer of central decision-making to democratically elected local and regional bodies gives citizens multiple points of access, thereby enhancing opportunities for public participation, increasing the accountability and responsiveness of elected officials to local citizens, and hence providing incentives for more responsive democratic government. Fiscal decentralisation is believed to reduce corruption by strengthening the transparency of decision making and the accountability of elected officials to local communities. The advantages of decentralisation should be particularly evident in deeply divided plural societies. Different institutional forms of decentralisation, notably federal constitutions, have long been recommended as the preferred mode of democratic governance designed to maintain stability within multinational states.¹⁷¹

Plural societies, like Nigeria, are characterized by the existence of multiple ethnic groupings, whether demarcated by class, linguistic, religious, racial, tribal, or caste-based identities. As a result, federalism and decentralisation are thought to be particularly important strategies for plural societies where groups live in geographically concentrated communities and where the administrative boundaries for political units reflect the distribution of these groups. These

¹⁷¹ For a critical discussion and review of these claims, see Jan Erk, "Does Federalism Really Matter?" (2006) 39 *Comparative Politics* 103; Daniel Treisman, *The Architecture of Government: Rethinking Political Decentralisation* (New York, Cambridge University Press, 2007); R. Fisman and R. Gatti, "Decentralisation and corruption: evidence across countries" (2002) 83 *Journal of Public Economics*, 325; Norris, *supra* n 22.

arrangements allow spatially-concentrated groups a considerable degree of self-determination to manage their own affairs and to protect their own cultural, social, and economic interests within their own communities. For example, to control religious teachings in school curriculums, to determine levels of local taxation and expenditure for poorer marginalised areas which have lost out to development, to administer internal security forces and justice systems, and to establish language policy regulating public broadcasting and official documents.¹⁷²

Decentralisation is a corollary principle of federalism adopted into the Nigerian federation by virtue of the 1999 Constitution (as amended). The broad strokes of decentralisation can be gleaned from the three-tier federal structure in sections 2, 3, 4, 5, 6, and 7 of the Constitution, of one (1) Federal, 36 States, and 774 Local Governments.

Apart from this structural decentralisation, there is constitutional fiscal decentralisation. Counteracting the formal constitutional decentralisation are other constitutional and operational centralisation provisions, particularly in the sphere of the distribution of legislative and executive powers between the three tiers of government that have over the years been lopsided in favour of the central/federal government, to the detriment of the states and local governments. The principles of resource control, allocation and management constitutionally operated by the federal government, with the corollary of derivation formula for the mineral rich states, reinforces the perception of over-centralisation and inequity within the Nigerian federation.¹⁷³

¹⁷² Arend Lijphart, *Patterns of Democracy* (New Haven, Yale University Press, 1999), 196. Nancy Bermeo, "The Import of Institutions" (2002) 13 *Journal of Democracy* 96; Alfred Stephan, "Federalism and Democracy: Beyond the U.S. Model" (1999) 10 *Journal of Democracy* 19; Ted Robert Gurr, *Minorities at Risk: A Global View of Ethno-political Conflicts* (Washington DC: US Institute of Peace Press, 1993).

¹⁷³ "Resource allocation and management as well as fiscal federalism/decentralisation have remained contentious issues in a federal state such as Nigeria. This is because the essence of

This tendency towards over-centralisation and unitary practices in a federation, have their origins in the long period of military rule and has become the bane of federalism practice in Nigeria. Arising from this over-centralisation in the constitutional and operational framework, the Nigerian federalism has been described as "a unitary government masquerading as a federal government".¹⁷⁴ This "Military Era" hang-over 'over-centralisation syndrome' was epitomised in the abuse of power by the federal government, under the President Obasanjo Administration, when the Minister of Finance was directed by the President to withhold the federation account allocation to Local Government Councils in Lagos State as punishment for creating, operating, and maintaining new Local Government Areas/Councils, known as Local councils Development Areas (LCDAs), without the constitutional approval of the National Assembly. This led to the institution of the action against the federal government by Lagos State in *Attorney General of Lagos State v. Attorney General of the Federation*,¹⁷⁵ and the invalidation of the withholding of the allocation as null and void. Unfortunately, the Obasanjo Administration failed to comply with the Supreme Court's decision, as the allocations were not released until his successor Late President Umaru Yar'Adua did. These and many more of such overcentralisation features of the Nigerian Constitutional framework have been offered as one of the grounds for the call for proper decentralisation and restructuring, by devolving more powers from the

government at all levels is to bring about rapid economic development through adequate provisions of social and economic infrastructures for the citizenry. The fiscal arrangement within the federation should, therefore, adequately cater for the federating units to enable them to discharge their constitutional responsibilities. Consequently, the struggle for control of power and equitable distribution of resources by the component units that make up the federation is driven by the need for balanced development, fiscal justice and fair play." See Ekpo and Englama, *supra* n 28.

¹⁷⁴ Banji O. Adediji, *Deeper Insight into Nigeria's Public Administration* (Bloomington, Indiana, AuthorHouse, 2013), 96 – 98.

¹⁷⁵ (2003) 12 NWLR (Pt 833) 1.

central/federal government to the state governments and local governments.¹⁷⁶

Critics of decentralisation and restructuring line of argument have also countered that the system of federalism in Nigeria has also thrown up an intriguing paradox of political decentralisation with low subnational viability and transparency; while states have fiscal autonomy, and states' spending constitutes around half of the consolidated public spending, not much is known about how they manage natural resource revenues, as transparency and accountability is severely lacking and corruption is rife in state fiscal practices.¹⁷⁷ Worst still, the system of local government administration that was intended as a third tier of government, has failed woefully in good governance, service delivery, transparency and accountability, and development activation. The absence of verifiable accountability mechanism at all tiers of government within the Nigerian federation and the rabid rampaging corruption, raises a cloud of doubt on the viability of the pursuit of further political, administrative, and fiscal decentralisation,¹⁷⁸ as being demanded by the decentralisation and restructuring protagonists.

¹⁷⁶ Vanessa Ushie, *Political Decentralisation and Natural Resource Governance in Nigeria* (The North-South Institute Research (NSI) Report NSI, December, 2012); Hao Bin, "Distribution of Powers between Central Governments and Sub-national Governments (Conference Room Papers, Committee of Experts on Public Administration Eleventh Session New York, 16-20 April 2011), 3-4, 9.

¹⁷⁷ Vanessa Ushie, *opt cit.*; Hao Bin, *opt cit.*, 3-4, 9.

¹⁷⁸ *Administrative decentralisation* transfers bureaucratic decision-making authority and managerial responsibilities for the delivery and regulation of public services and for raising revenues from the central government to subnational tiers. *Fiscal decentralisation* transfers some forms of resource allocation, usually by giving subnational units authority over local taxes and spending. *Political decentralisation* transfers authority and responsibility from the central government to public bodies at subnational level. The prime motivation of political decentralisation has been to strengthen opportunities for local control over public services and to expand opportunities for electoral accountability, political representation, and civil society engagement. See Jonathan Rodden, "Comparative Federalism and Decentralisation: On Meaning and Measurement." (2004) 36

2.2.3. "Devolution"

Conceptually, devolution applies to a unitary system which differs from federalism, in that the devolved powers of the sub-national authority may be temporary and are reversible, ultimately residing with the central government. In federal systems, by contrast, sub-unit government is guaranteed in the constitution, such that the powers of the subunits cannot be withdrawn unilaterally by the central government (i.e. without the consent of the subunits being granted through the process of a constitutional amendment). The sub-units, therefore, have a lower degree of protection under devolution than under federalism. Thus devolution is the statutory delegation of powers from the central government of a sovereign state to govern at a subnational level, such as a regional or local level. It is a form of administrative decentralisation. Devolved territories have the power to make legislation relevant to the area.¹⁷⁹

Devolution is therefore often associated with a unitary system of government more than a federal system of government. Indeed, devolution became part of the constitutional lexicon of Nigeria under the colonial era, at which time the British Colonial Administration devolved powers from the central government to the regional government, especially under the 1946 Richards Constitution and the 1951 Macpherson Constitution. However, the federal presidential constitutions operated in Nigeria since 1954, bequeathed through 1960 and 1963 Constitutions, retained by the 1979 Constitution and

Comparative Politics 481; Ugo Panizza "On the Determinants of Fiscal Centralisation: Theory and Evidence (1999) 74 *Journal of Public Economics* 97; Dan Stegarescu, "Public Sector Decentralisation: Measurement Concepts and Recent International Trends" (2005) 26 *Journal of Applied Public Economics* 301; R. Andrew Nickson, *Local Government in Latin America* (Boulder, Colorado, Lynne Rienner Publishers, 1995); Dawn Brancati "Decentralisation: Fueling the Fire or Dampening the Flames of Ethnic Conflict and Secessionism?" (2006) 60 *International Organisation* 651.

¹⁷⁹ See the definition of "devolution", available online at <https://en.wikipedia.org/wiki/Devolution>

currently by the 1999 Constitution (as amended), will appear to be antithetical to devolution in its provisions in sections 1, 2, 3, 162, First Schedule Parts 1 & II.¹⁸⁰ The foregoing points are well articulated in the commentaries of American jurists on the federal Constitution of the USA.¹⁸¹

Devolution connotes a surrender of a function by a superior government to a subordinate government that is generally complete, permanent, and of "constitutional magnitude." Strictly speaking, devolution cannot occur between the federal government and the states under the U.S. Constitution. And since our federal system is one of dual sovereignty, in which the federal government and the states each have constitutionally specified powers, the federal government lacks the authority to devolve responsibilities. Kincaid concludes that what is currently referred to as devolution is more accurately called "restoration" or "rebalancing" of powers between the federal government and the states to conform more closely to what the authors of the Constitution had in mind.¹⁸²

Be that as it may, when devolution is used in relation to the Nigerian federalism under the 1999 Constitution, it denotes the constitutional process of re-apportionment or "devolving" of power from the central government to the federating units, by the process of constitutional amendment. This process anticipates that some sections in the constitution and items on the Exclusive Legislative List will be removed from the federal sovereign competence into the Concurrent Legislative List or moved "exclusively" into the residual matters within the competence of the federating states. Consequently, the

¹⁸⁰ *Attorney General of Abia State & 35 Ors v. Attorney General of the Federation* (2003) FWLR (Pt 152) 131, 147 and 1999 B-C (2002) 6 NWLR (Pt. 763) 264 (Is this alternative citation. If so please confirm accuracy); *Attorney General of the Federation v. Attorney General of Abia State & 35 Ors* (1983) 14 NSCC 181, 183, 192.

¹⁸¹ Sandra Day O'Connor, "Altered States: Federalism and Devolution at the 'Real' Turn of the Millennium" (2001) 60 *Cambridge Law Journal* 495; Robert Tannenwald, "Devolution: The New Federalism - An Overview" [1998] *New England Economic Review* 1(May/June Issue).

¹⁸² See Tannenwald, *ibid*, 2.

powers that inhere in those sections and items will be jointly exercised by the two tiers of government or only by the federating states. Devolution is therefore used in this sense as a mechanism for "rebalancing", to address perceived (or real) over-centralisation of sovereign powers within the central government of the federation. This is the sense, in which the term devolution is used in the National Conference 2014 Report¹⁸³ and by other proponents of devolution of powers within the Nigerian federation.¹⁸⁴ Indeed, this is how it will be used in the rest of this work.

Devolution can therefore be achieved in the Nigerian federation through formal legal mechanism of constitutional amendment, statutory enactment, institutional and administrative changes, and the accompanying less formal process of policy formulation, political and economic realignment. The attempt at devolution by the 7th National Assembly through constitutional amendment was unfortunately unsuccessful, due to the exercise of the veto power by former President Goodluck Jonathan, followed by the institution of a legal action in court against the National Assembly by the then Attorney-General of the Federation, Mohammed Adoke, to oppose the process. Former President Jonathan's reasons for the veto were explained thus: "In view of the foregoing and absence of credible evidence that the Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act 2015 satisfied the strict requirements of Section 9(3) of the 1999 Constitution, it will be unconstitutional for me to assent to it." The President stated further that: "I, therefore, withhold my assent and accordingly remit the Constitution of the Federal Republic of Nigeria (Fourth Alteration) Act 2015 to the

¹⁸³ Available online at <http://thewillnigeria.com/news/wp-content/uploads/2014/08/1.pdf>

¹⁸⁴ "NIGERIA: What is Restructuring?", *The Vanguard*, June 30 2017, at: <http://www.vanguardngr.com/2017/06/nigeria-what-is-restructuring/>; Emeka Nwosu, "Restructuring And Quest For Balanced Federation", *The Leadership*, July 23, 2017, <http://leadership.ng/2017/07/23/restructuring-quest-balanced-federation/>

Senate/House of Representatives of the Federal Republic of Nigeria."¹⁸⁵

As noted above, we may achieve devolution in Nigeria by a process of constitutional amendment, rather than by administrative delegation from the centre to the states. As a result, those advocating devolution must take up the challenge of employing the constitutional amendment process started by the 8th National Assembly and hopefully, to be completed by the newly elected 9th National Assembly, to achieve their objective. It must be noted, however, that the 8th National Assembly neither evinced an intention to adopt the Recommendations/Report of the National Conference 2014 hook-line-and-sinker, nor used its constitutional amendment process to restructure the Nigerian Federation.¹⁸⁶ A viable option that may push the process through is to rally the whole civil society protagonists of devolution into a counter-force that will ensure that there can be no (self-serving) constitutional amendment by the National Assembly without, at the minimum, the implementation of the devolution proposals

¹⁸⁵ "**Jonathan v. National Assembly**: Supreme Court halts ongoing Constitution Amendment", *Premium Times*, July 20 2017, at: [Jhttps://www.jonathan Vs. National Assembly_ Supreme Court halts ongoing Constitution Amendment - Premium Times Nigeria.html](https://www.jonathan-vs-national-assembly-supreme-court-halts-ongoing-constitution-amendment-premium-times-nigeria.html)

¹⁸⁶ Akpabio, the Senate Minority Leader commenting on the constitutional amendment process, hinted at the possibility of the National Assembly considering some of the recommendations of the 2014 National Conference report if formally presented to it before the conclusion of the ongoing amendment of the 1999 constitution. "The 2014 National Conference may not have a place in the ongoing constitutional amendment process because it has not been formally presented to the parliament. I am talking in terms of the House of Representatives and the Senate. But if they do come, we will look at those things. The amendment of the constitution is a continuous exercise. The journey of a mile begins with a step and if the report of the 2014 National Conference comes, we will look at it." - "Another Round of Constitutional Amendment", *This Day*, July 24, 2017, at <https://www.thisdaylive.com/index.php/2017/07/24/another-round-of-constitutional-amendment/>; see also Johnny Agbakwuru, "NASS considers Confab reports in constitution amendment", at: <https://www.vanguardngr.com/2017/05/nass-considers-confab-reports-constitution-amendment/>

contained in the National Conference Report 2014, and those being proposed by the ethnic nationalities and other stakeholders in the Nigerian federation.

2.2.4. "Restructuring"

Restructuring is the buzzword in the national debate on the current state of federalism in Nigeria, with different meaning and connotation, depending on the perspective of the speaker or discussant at the relevant time.¹⁸⁷ The term lacks precise and defined meaning but connotes several meanings in relation to the present state of the Nigerian federation. It has been observed that restructuring the Federation "is a term which has gained wide currency in the nation's political discourse, having been popularised through its indiscriminate and lugubrious use by the most vocal sections of the Nigerian elite." It has been observed that, like all popular concepts, restructuring has hardly ever been clearly defined and its nebulousness has been congenial to the slippery nature of its proponents. "Restructuring" has come to represent, in reality, an omnibus word for all forms of adjustments, alterations and cosmetic manipulations aimed at changing the formula on the basis of which economic resources and political power are shared or distributed among the Nigerian elite. Each section traditionally defends the area of its comparative advantage at any given time, standing by the status quo when it serves its purposes and asking for "restructuring" when it does not."¹⁸⁸ Political restructuring has also been articulated as being "intended to lay an institutional foundation for a more just and

¹⁸⁷ "NIGERIA: What is Restructuring?", *The Vanguard*, June 30 2017, at: <http://www.vanguardngr.com/2017/06/nigeria-what-is-restructuring/>; Emeka Nwosu, "Restructuring And Quest For Balanced Federation", *The Leadership*, July 23, 2017, <http://leadership.ng/2017/07/23/restructuring-quest-balanced-federation/>

¹⁸⁸ Sanusi Lamido Sanusi, "Issues in Restructuring Corporate Nigeria", available online https://www.arewaonline-ng.com/News_sanusi_lamido_sanusii_restructuring.html

equitable sharing of the political space by multi-national groups cohabiting in a federal polity".¹⁸⁹

In giving meaning and content to restructuring within the context of the Nigerian federation, one can postulate that, it is an idea that relates to the constitutional, political, economic, social and cultural condition of the present Nigerian federation and the perceived requirement of examination, diagnosis, and prognosis of its present and possible future configuration, apparatus, institutions, powers, resources, administration, operation, management, personnel, development, and impact on the Nigerian people, elites, geo-political and socio-cultural groupings, and ethnic/tribal nationalities. In short, it is an equation or formula for bargaining a new Nigerian federation, by all competing interest blocks within this plural and diverse geographical expression known as Nigeria.

For the major ethnic groupings, especially the dominant/ruling one, Hausa/Fulani, Yoruba, and Ibo, restructuring may mean access to power, positions, and resources. For the minorities in the north central and middle belt parts of the country it may well mean throwing off the suzerainty and feudal over-lordship of the Hausa/Fulani. Indeed, it is believed that the claim of 'marginalisation' and lack of access to power is at the root of the militant posture of MASSOB and IPOB, who are calling for restructuring at the minimum or disintegration of the federation and secession of Biafra at the maximum, of the Ibo southeast, out of the federation. For other ethnic/tribal nationalities, and geo-political and socio-cultural groupings, restructuring means more equitable resource management and allocation, independence from majority domination, and more involvement and engagement in and with the government. For the resource rich Niger-Delta south-south geo-political zone, restructuring means "resource ownership and control" or at the minimum increased derivation formula from 13% to 50%. For other minorities, the creation of more states and

¹⁸⁹ Kunle Amuwo, Adigun Agbaje, Rotimi Suberu, Georges Heraul (eds), *Federalism and Political Restructuring in Nigeria* (Ibadan, Nigeria, Spectrum Books Ltd, 1998).

decentralisation for them to be free of domination and oppression by the majority ethnic/tribal groups, whom they believe have been in total control and dominance over them in the federation.¹⁹⁰

It has been noted that for restructuring to be effected in "holding-together" federation like Nigeria, it must be recognised that the steady unfolding of restructuring or decentralisation must follow a path-dependent trajectory, structured by the kind of norms and rules put together by the forces that have shaped the federation since its creation, that maintains or relinquishes the authority of the political centre in managing the restructuring process¹⁹¹. This resonates with the philosophy behind the constitutional amendment procedures of the 1999 Constitution,¹⁹² if the restructuring is to follow constitutional procedures. Going by the outcomes of the attempt of Lagos State and other States to create new Local Government Councils and effect constitutional changes and the decision of the apex court in *Attorney General Lagos State v. Attorney General of the Federation*¹⁹³ constitutional amendment to effect restructuring is not going to be an easy road to travel. Non-constitutional alternatives may not also be a tea-party either.¹⁹⁴ The question then is whether the restructuring of the Nigerian federation will ever be possible?

- ¹⁹⁰ Femi Omotoso and Toyin Abe, "Federalism, Politics and Governance in Nigeria (2014) 4 *Public Policy and Administration Research* 64; Eyene Okpanachi and Ali Garba, "Federalism and Constitutional Change in Nigeria" ((2010) 7 *Federal Governance* 1; NN Elekwa, MF Bellow and AT Akume, "Fiscal Restructuring in Nigeria: a Historical Review" (2011) 9 *Journal of Research in National Development* 1596.
- ¹⁹¹ Simon Taoubeau, Restructuring the State: Mainstream Responses to Regional Nationalism, *Publius: The Journal of Federalism*, Vol. 48, No. 1, 2018, pp. 76 - 101 at 93-94
- ¹⁹² Sections 8 and 9 of the 1999 Constitution
- ¹⁹³ *Attorney General Lagos State v. Attorney General of the Federation*, (2004) LPELR-SC.70/2004; A.-G., Lagos State v. A.-G., Fed (2004) 18 NWLR (Pt.904)1; (2004) 20 NSCQR 99
- ¹⁹⁴ Rotimi T. Suberu, Renovating the Architecture of Federalism in Nigeria: The Option of Non-Constitutional Renewal, available at: https://www.researchgate.net/publication/239781773_RENOVATING_THE_ARCHITECTURE_OF_FEDERALISM_IN_NIGERIA_THE_OPTION_OF_NON-CONSTITUTIONAL_RENEWAL

2.2.5. "Disintegration"

The disintegration of an existing federation refers to the complete collapse of an extant federal state or the exit of some part of the constituent units out of the federation.¹⁹⁵ This can happen for various reasons, including the asserting of the right to self-determination by the exiting unit(s).¹⁹⁶

Calls for the disintegration of Nigeria are not new.¹⁹⁷ However, disintegration has in the present Nigerian federation become one of the options being considered by the stakeholders in the Nigerian State. Agitations of IPOB for the disintegration of the Nigerian federation in order to express their right to self-determination of the state of Biafra, if successful, may result in constitutional readjustment, as in the case of Malaysia. It may also result in total failure and complete Balkanisation of the different ethnic/tribal nationalities into smaller states. And indications are rife that the latter will be the case. Already, the Yoruba ethnic/tribal nationality of the Southwest are involved in the "integration process" of the Southwest states of Oyo, Ogun, Ondo, Osun, Ekiti and Lagos that will evolve into "Oduduwa" State. While the minorities of the Middle Belt have also indicated their desire to secede out of the federation independently of the Hausa/Fulani oligarchy of the North, the

ERALISM_IN_NIGERIA_THE_OPTION_OF_NON-CONSTITUTIONAL_RENEWAL

- ¹⁹⁵ Thomas M. Franck (ed), *Why Federations Fail: An Inquiry into the Requisites for Successful Federalism*, (New York, NY, New York University Press, 1968)), 169-170.
- ¹⁹⁶ *Ibid.* For example, in the case of Malaysia, the early departure of Singapore from the federation in August 1965 did not bring about its complete collapse. Indeed, it led to the immediate constitutional readjustment and adaptation of the remaining constituent units in the federal state, a process that indicated how far they still desired federation for its own sake. Today the Federation of Malaysia's 11 constituent units of Peninsular Malaysia and the two states – Sabah and Sarawak – of North Borneo across the South China Sea comprise the 13-unit multiethnic, multicultural and multinational federation.
- ¹⁹⁷ Gaddafi Says Nigeria Should Split into Several States, BBC NEWS (Mar. 29, 2010, 3:08 PM), <http://news.bbc.co.uk/2/hi/africa/8593355.stm>.

Niger-Delta minorities, are not prepared to go with the Ibo Biafra, but rather to evolve into a south-south federation of their own.¹⁹⁸

2.2.6. "Secession"

Secession is often interchangeably used with disintegration. But it has been argued that a simple definition of secession masks many problems, both practical and theoretical, but that, at its heart, secession is a claim for self-government, since it involves the withdrawal of territory by the community in occupation¹⁹⁹ from the jurisdiction of a larger entity that hitherto exercised sovereignty and governmental authority over the seceding territory. Often times the struggle for redistributive justice within an existing federation by a territory for its people graduates into self-determination and climaxes into secession. The ethnic conflict of the post-independence '60s in Nigeria culminated in the bloody pogroms targeted at Ibos in the Northern part of Nigeria. This event inspired the call for secession by the then Governor of Eastern Region, Lt. Col. Odumegwu Ojukwu, who led the Biafra civil war against the federal forces from 30th May 1967 to 15th January 1970, when Biafra surrendered.²⁰⁰

The scars of the Civil War and Biafra never seemed to have properly healed. Rather the wounds of Biafra and the loss of the Civil War was borne by the Ibos who allege 'marginalisation' and now claim redistributive justice through MASSOB and now IPOB.²⁰¹ The response of Arewa Youths

¹⁹⁸ *Federalism and Ethnic Conflict*, supra n 7.

¹⁹⁹ Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colorado, Westview Press, 1991).

²⁰⁰ Heerten and Moses, supra n 7, 173 ("Repeated outbursts of violence between June and October 1966 peaked in massacres against Igbos living in the *Sabon Gari*, the 'foreigners' quarters' of northern Nigerian towns. According to estimates, these riots claimed the lives of tens of thousands. This violence drove a stream of more than a million refugees to the Eastern Region, the 'homeland' of the Igbos' diasporic community.").

²⁰¹ Okojie, supra n 14.

Consultative Council under the banner of the Coalition of Northern Groups that all Igbo citizens should vacate the North by October 1, 2017²⁰² pushed the option of secession to the front burner of the crises plaguing the Nigerian federation. It also helps to project as viable the secession option given the seemingly popular or cult-like support for IPOB in Ibo Eastern Nigeria. The Federal Government's use of military force to quell the insurrection, declaration of IPOB as a terrorist group, has not helped the matter. However, the disappearance of the IPOB leadership (especially Nnamdi Kanu) from the East and, possibly, Nigeria, has momentarily taken 'the wind out of the sail' of the IPOB secessionist agitators for now. That is not to say that the campaign and agitation for secession, disintegration, or restructuring by MASSOB and IPOB have ceased.

PART III

3.0. Quo Vadis?

3.1. Which Way Nigeria?

The common adage that "a problem once known is half solved" has often times not applied to Nigeria, otherwise, most known Nigerian problems would have been solved by now, and we probably would not have to be enmeshed in the restructuring debate at this stage of the evolution and development of the Nigerian federation. The reality from our preceding discussions of the past and present on the contentious issue of restructuring the Nigerian federation raises the question, *quo vadis* Nigeria? Major challenges of the Nigerian federation appear to defy simple solutions, and the calls for restructuring still faces the how and what questions, although the latter have been substantially addressed in the preceding sections, leaving us with the former. How can the Nigerian federation be restructured in the light of the constitutional, political and socio-economic hurdles

²⁰² "Arewa Youth Threat", *The Nation*, June 14 2017, at: <http://thenationonline.ng/arewa-youth-threat/> (visited on 20th August, 2017).

lined up against the attainment of a consensus and acceptable outcome for all stakeholders?

3.1.1. Constitutional Amendment: Overcoming the Majoritarian "Veto"

The Supreme Court in *FRN v. Anache*²⁰³ affirmed that the nature, substance and form of Nigerian federalism are as specified in the Constitution. Hence any restructuring or rebalancing logically must of necessity undergo the constitutional procedure for amending the relevant provisions of the 1999 Constitution to bring it into effect.²⁰⁴ Constitutional experience, however, has shown that except for the 1st and 2nd Alterations (on electoral matters) and the 3rd Alteration (on the National Industrial Court) effected on the 1999 Constitution (as Amended), all attempts to effect further alterations of the 1999 Constitution in order to restructure the Nigerian Federation have failed, until the 4th Alteration signed into law by President Buhari in 2018.²⁰⁵

The provisions of section 9 of the 1999 Constitution stipulates two-thirds majority of the National Assembly for the alteration of the provisions of the constitution that does not relate to section 8 and Chapter IV (which require four-fifth majority). Overcoming this special majority vote requirement has in operation culminated into "majoritarian veto" in order to effect restructuring alterations, which now poses as one of the most formidable hurdles for proponents of restructuring. This is so because most proponents of restructuring are from the Southwest, Southeast and South-South zones, while the majority of the antagonists to restructuring are from the

²⁰³ (2004) 14 WRN 1, 61-62.

²⁰⁴ According to Yakubu Dogara, the Speaker of the House of Representatives, only a new constitution can grant restructuring. See, *The Guardian*, July 13, 2017 <https://guardian.ng/news/only-new-constitution-can-grant-restructuring-says-yakubu-dogara/>

²⁰⁵ Jonathan Vs. National Assembly: Supreme Court halts ongoing Constitution Amendment, Premium Times, July 20 2017, at: https://www.Jonathan Vs. National Assembly_ Supreme Court halts ongoing Constitution Amendment - Premium Times Nigeria.html

Northern zones.²⁰⁶ The special majority votes required for constitutional amendment procedure means that the proponents must carry along the antagonists to secure the majority of votes specified for the National Assembly and the State Houses of Assembly in order to secure a restructured federation.

The Constitution amendment/alteration processes embarked upon by the 7th Assembly allegedly failed for not securing the requisite majority votes. As it is, the majoritarian veto was at play in the 8th National Assembly constitutional amendment/alteration process, since, as earlier observed, the National Conference 2014 Report's recommendation on restructuring was not among the Bills considered by the National Assembly. It needs be said that, if the constitutional amendment/alteration of the 8th National Assembly did not deal with the issues at the core of the agitations for restructuring, the whole amendment process would have succumbed to the majoritarian veto. Sadly, any 4th Amendment to the 1999 Constitution that is a product of the majoritarian veto, without any constitutional reform of the Nigeria federation, will amount to no more than cosmetic surgery and will, therefore, not address the urgent concern in achieving and sustaining a true federation that is acceptable to all. The 4th Amendment to the Constitution signed into law by the President, actually dealt with some intergovernmental relations, but failed to deal with major federation impacting matters.

In the face of these constitutional hurdles, some proponents of restructuring have argued for a referendum and/or plebiscite for the passing of a new constitution that will usher in a restructured and new federation, and thus bypass the National Assembly and the majoritarian hurdle discussed above.

²⁰⁶ Alleging ethnic and tribal biases, Arewa Consultative Forum (ACF) has faulted the current agitation for the restructuring of Nigeria, warning that such agitation may not promote the unity and development of the nation. See *The Guardian*, July 13, 2017 <https://guardian.ng/news/only-new-constitution-can-grant-restructuring-says-yakubu-dogara/>

However, since the 1999 Constitution does not provide for its amendment by these other methods, the constitutionality and legality of such methods must be kept in view. The same can be said of those advocating for use of violence and force, as such method will only attract counter-force from the state to suppress such insurrection, as the military response to the IPOB agitations has shown. Any non-constitutional method of changing the Constitution will amount to a revolution.

Most advocates of restructuring identify with the National Conference Report 2014 recommendations on restructuring.²⁰⁷ The National Assembly has also acknowledged this fact through the pronouncement of its leaders and members that the two chambers will be willing to incorporate the recommendations of the National Conference Report 2014 into its constitutional amendment programme,²⁰⁸ and it is hoped that the 9th National Assembly that will be convened any time from May 29, 2019, will implement the recommendations of the National Conference 2014. More importantly, protagonists of restructuring must be more inclusive in their approach in order to persuade the antagonists of restructuring and thus be able to present a solution that is acceptable to all, and also accommodate the unity in diversity, and integration in pluralism that are the *raisons d'être* of the Nigerian federation. After all, the "secret of change is to focus all of your energy, not on fighting the old, but on building the new."²⁰⁹

The viability of constitutional reforms will therefore be dependent on consensus building, inclusivity, and nationalistic spirit (that surpasses ethnic or tribal nationalism) for the

²⁰⁷ Yoruba Summit: The Ibadan Declaration Communiqué of Yoruba Summit Held in Ibadan on 7th September 2017. See the Nigerian Lawyer, Sept 9, 2017, at <https://thenigerialawyer.com/yoruba-summit-the-ibadan-declaration-communique-of-yoruba-summit-held-in-ibadan-on-7th-september-2017/>

²⁰⁸ See n 58.

²⁰⁹ See Socrates in Dan Millman, *Way of the Peaceful Warrior: A Book that Changes Lives* (HJ Kramer, 2006, first published in 1980).

collective drawing of a federal architecture that will as far as possible address the National Question Issues, and chart pragmatic and sustainable institutional and operational framework for a Nigerian federation that will foster national integration and the development of the Nigerian nation-state.

3.1.2. Non-Constitutional Reforms Approaches

One of the popular non-constitutional reform approaches is the call for the convocation of a Sovereign National Conference of ethnic nationalities of the federation, similar to the one that took place in Republic of Benin in the 90s. The argument being that since before or after Independence of the Nigerian State there were no such full discussions of the basis and nature of the Nigerian federation, and there has been none since then, creating tensions between the ethnic groupings. However, the call for the convocation of the Sovereign National Conference is flawed in several respects, including the constitutional challenge of having a non-constitutional procedure that will be inconsistent with the provisions of constitutional amendment of the 1999 Constitution, and to the extent of its inconsistency be declared null and void by virtue of section 1(3) of the Constitution (the supremacy and eternity clause).

Another challenge deriving from the Constitution is the fact that democratic governance and institutions established and functioning under the constitution, will pose several obstacles, especially, the issue of conflict between the constitutionally elected representative of the political parties and those to be elected as the representative of the ethnic nationalities within the federation. The issue of sovereignty within the federation that is stated by the constitution to be vested in the people who then elect their representatives and the idea of a sovereign national conference of ethnic nationalities within the federation are diametrically opposed. More fundamental is the fear and suspicion among ethnic nationalities that there is the possibility of the sovereign national conference spinning out of control in such a way as to lead to the disintegration and Balkanisation of the federation or precipitate a military coup and takeover of the government. The removal of the word

sovereign to turn the gathering to just a national conference will appear to have been overtaken by the National Conference of 2014, the Report of which is yet to be implemented.

3.2. RECOMMENDATIONS AND CONCLUSION

The simple answer to the seminal question, What Manner of Federation is this? Is that the Nigerian federation is a unique one borne out of a colonial policy to administer a plural and diverse, but minerals rich society that has woefully failed to attain its potentials of evolving into the giant of Africa as a nation state where Unity, Faith, Peace, and Progress is not only the motto but is its reality. In the place of Unity there is ethnic/tribal/religious activism; in the place of Faith there is mutual distrust, suspicion and hatred; in the place of Peace there is war, armed conflicts, insurgency, banditry, kidnapping, violence and criminality; and in the place of Progress there is underdevelopment, infrastructural deficiencies, systemic corruption, abject poverty, hopelessness and existential crisis that all threaten to pull the federation down into failure and oblivion. Our analysis indicates the need for urgent and meaningful reforms of the Nigerian federation as it is presently.

3.2.1. Recommendations

Clearly, the practice of federalism has evolved from the colonial past as the most enduring feature of the Nigerian State. However, there are gaping cracks, even chasms and blind-spots that are evident from the present state of the federation and are begging for attention, consideration, consensus-building and decisive decisions on the future of federalism in Nigeria. Restructuring and all other contentions within the broad spectrum of proposals for the rebuilding of the present Nigerian federation must, therefore, be considered holistically for a better future for the nation-state.

There are several recommendations that have been made and thoroughly canvassed in several national documents, chief among which is the National Conference Report 2014. One may therefore make a preliminary recommendation that those recommendations be formally brought before the National

Assembly for consideration in the amendment/alteration process. However, in the light of the foregoing discussions, the following recommendations can be deduced from this Lecture:

- (a) There is a need for dialogue and consensus-building on the context, content and complexity of constitutional reforms of the Nigerian federation. The constitutional reforms procedures must be inclusive beyond the bare parties, socio-cultural organisations, ethnic nationalities and their shadow militias/organisations, governmental organisations/apparatus, non-citizens, remembering that the other stakeholders, and all State Houses of Assembly, will National Assembly and procedure necessary to bring fulfil the constitutional constitutional procedure into the product of the non-constitutional legality;
- (b) The federal architecture for the internal security and welfare of the State is obsolete and archaic thereby needing a constitutional, statutory, institutional, operational and strategic overhaul that will impact our armed forces, police, and all security agencies so as to be able to contain effectively all security challenges within the federation;
- (c) The intergovernmental relationship between the central/federal and state governments, on the one hand, and the state and local governments, on the other hand, as canvassed by the proponents, on the other hand, devolution, and rebalancing of decentralisation, address the problems of over-centralisation of powers must be undertaken to and the misalignment and asymmetrical relationships between the tiers of government in the Nigerian federation. Moreover, the issue of viability and sustainability of the unitary states, collaborative regional/zonal integration for economic-social-political development must be thoroughly examined;
- (d) Contentious issues relating to fiscal relations on revenue sharing (vertical and horizontal), derivation, resource management and resource control, as presently operated within the Nigerian federation require reconsideration in

order to quell the ambers of militancy and agitations in the Niger-Delta Areas and in other areas from where resources are derived;

- (e) The 'Nation Questions' relating to inequity, injustice, integration, and national development, such as 'federal character', 'zoning', 'state police', 'regional integration', access to power, marginalisation, majority/minorities and domination question, among others, must be openly and seriously addressed for the sake of having a more viable and stable federation;
- (f) The fundamental questions of leadership, good governance, rule of law, transparency, accountability, and development, must be addressed in a serious attempt at restructuring the Nigerian federation, and resolving issues of national integration and nation/state building;
- (g) The welfare, value and quality of life in Nigeria must be addressed through good governance, social investment, and development goals, to uplift Nigerians out of the quagmire of poverty and deprivation.

3.2.2. Conclusion

Adoption of the federalism principle for the governance of Nigeria, during the colonial period, was dictated by the plural and diverse nature of the country. However, what the Nigerian federation has evolved into presently contradicts the basic tenets and objectives of the federalism principle, and makes the Nigerian federation a very poor example of the practice of federalism. The consequential unease and strident agitations for restructuring, true federalism, fiscal federalism, devolution, reconfiguration, decentralisation, rebalancing, disintegration, secession, and all such manner of counter proposals, must therefore not be dismissed as rantings of ethnic/tribal jingoists, losers, discontent-elements, trouble-makers, rabble-rousers, and enemies of the state, and the likes.

The call for constitutional reforms of the Nigerian federation is a wake-up call for a nation drifting towards massive storms that threaten the ship of State. For decades, Nigerians have

adopted an "ostrichian" approach of ignoring all the signs and gathering of clouds in the firmament of the nation-state. This Lecture has laid bare the manner of the Nigerian federation, which has drifted far from the *raison d'être* for the adoption of federal principles, unity in diversity for effective and equitable management of national resources for the welfare of the people and the development of the nation state. The modest recommendations this Lecture makes offer opportunities for redesigning the constitutional, political, socio-economic, and cultural essence of the Nigerian federation, for a future that will truly secure "Unity, Faith, Peace, and Progress" for all Nigerians.

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Mr. Vice Chancellor Sir, I have come to the end of this Inaugural Lecture. Thank you all for your time.