

TOWARDS INJECTION OF NEW PRINCIPLES INTO NIGERIAN FEDERALISM

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Abstract

Nigeria operates a federal system of government by which the political structure allows states to unite under a central government. It is a compromise system of government that emerged as a result of British colonisation of the pre-colonial diverse multi-ethnic geo-political societies that is now Nigeria. Under the system, the federating units are to maintain a measure of independence and interdependence while the culturally pluralistic territories within them, as much as possible, are to retain their identities. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (“the Constitution”) creates a federal system of government. Historically, military regime, with its characteristic command structure, was not federalism-friendly in the country. The Constitution, in a democratically elected civilian government, provides, and successive governments have adopted, measures to preserve the nation’s federal system. Nevertheless, the practically low quality

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governance in the country, over the years when there have been both military and civilian regimes, generates a debate as to the functionality and even sustainability of the architecture of Nigerian federalism. This article is a contribution to the extant debate, and focuses on the limited extent to which the present Nigerian federal system is functional and sustainable. It is recommended that there should be a comprehensive amendment of the Constitution to incorporate provisions including restructurisation of the country's federal system, review of power sharing, decentralisation of the police force, meritorisation of the federal character and quota system, allowing each of the constituent units to be in charge of resources and revenue generated therein, and re-orientation of Nigerians to be federalism-friendly and patriotic. By these recommendations, there will be injection of new principles into the constitutional architecture of Nigerian federalism, in the interest of a politically stable one nation, truly bound in freedom, peace and unity.

Introduction

Federalism is an age-long political philosophy in which members of a group are bound together with a governing representative head. It is a political structure that allows states to unite under a central government to maintain a measure of independence and interdependence. The Constitution of the Federal Republic of Nigeria 1999 (As amended) (“the Constitution”) created a federal system of government as a compromise. Federalism is attributable

to the colonial experience and its multi-ethnic colouration. Colonialism began with the re-organisation and fusion of multifarious ethnic and cultural territories in what is known as the amalgamation in 1914, under the system of indirect rule and direct rule. Under the circumstances of birth and evolution, federalism offers an ideal model of government for a plural society like Nigeria. A federal system of government often arises from the desire of the people to form a union without necessarily losing their identities.

There have, however, been hue and cry over the quality of governance system in the country and its concomitant effect on slow economic and technological development as well as justice delivery of the country. One explanation for this trend is hinged on the country's federal system and how it is being structured and practised. Over the years, successive governments have adopted measures to preserve the nation's federal system. Such measures include power sharing among the tiers of government, revenue sharing formula, increase in revenue for oil producing states, creation of states and local governments and federal character system. The battle to control resources at the centre, however, rages, and centrifugal forces abound over centripetal forces. Divisive words and actions accentuate the necessity for the question whether the architecture of Nigerian federalism is functional or functional enough and sustainable. Now, the answer resonates first, the federalist debate which centres essentially on the need to understand the basis of the contract of true federalism. Secondly, it seeks to justify or otherwise defeat the unabated clarion call for a restructure of the Nigerian federation. In addition to the introductory remark, this paper embarks on conceptual clarification, discussion of the conception and birth of Nigeria, the

functional architecture of Nigerian federalism, how the features of Nigerian federalism show its practice in the country, an assessment of the functionality and sustainability of the system, its challenges, and concluding remarks, and recommendations are proffered.

Conceptual Clarification

For the sake of clarification of meanings of some words that are commonly employed in the paper, the following words are defined: ‘architecture’, ‘architecture of Nigerian federalism’, ‘functional architecture’, ‘federalism’, ‘functionalism’ and ‘sustainable’. ‘Architecture means designs or style of building(s), and in terms of ‘architecture of Nigerian federalism’, it is understood to mean the design or structure of Nigerian federalism. ‘Functional architecture’ is used to mean designed to serve practical purposes, beauty of appearance being secondary.

The word ‘federalism’ has its root in the Latin word ‘*foedus*’ meaning covenant. It may, therefore, be understood to be a political concept in which a group of members are bound together by covenant with a governing representative head¹. Numerous scholars have their respective definitions of federalism. The outcome of these definitions is that federalism is compartmentalised into being institutional, a design, a device, a process. The classical definitions of federalism portray the concept as being institutional. Using the American union as the basis of his thesis, Sir, Kenneth Wheare defined federalism as follows:

Federal government is an association of states so organised that power are divided between a general

¹ Mejekodumi, A, “Federalism in Nigeria: The Past, Current Peril and Future Hopes”, *Journal of Policy and Development Studies*, Vol. 9, No. 2, February, 2015, p. 108.

government, which in certain matters are independent of the governments of the associated states, and on the other hand, state governments, which in certain matters are in turn, independent of the general government separately².

In his words:

Federal government exists – when the powers of government are divided substantially, according to the principle that there is single independent authority for the whole area in respect of some matters and there are independent regional authorities for the other matters each set of authorities being co-ordinate with and not subordinate to the others in its own prescribed sphere³.

While alluding to the fundamental character of federalism as a political system in which there is central government and other state governments, Watts asserted that the components are co-ordinate, but, “neither is politically subordinate to the other, but interact with each other at many points both cooperatively and competitively⁴.

Nwabueze also gave a definition that tallies with the classical approach, thus:

² Wheare, K. C., *Federal Government*, 4th edition, (Oxford University Press, Oxford), 1963, p. 1.

³ *Ibid*, p. 33.

⁴ Watts, R. L., *Administration in Federal Systems*, (Hutchins Educational, 1997), p. 18.

Federalism is an arrangement whereby powers of government within a country are shared between a national country-wide government and a number of regionalised governments in such a way that each exist 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 its affairs, and with an authority in some matters exclusive of all the others⁵.

The formula of powers and functions sharing also reflected in Tamuno's definition. According to him, "federalism is that form of government where the component units of a political organisation participate in sharing powers and functions in a co-operative manner through the combined forces of ethnic pluralism and cultural diversity among others". It is essentially about "the distribution of political and economic decision making power among constituent units or levels of governments"⁶. To them, the federal principle is the method of dividing powers so that general and regional governments are each within a sphere, coordinate and independent. This classical definition emphasizes formal institutional requirements such as constitutional delimitation of powers, bi-cameral legislature, independent electoral system for both levels of government, multi-party system, a supreme court, etc.

⁵ Nwabueze, B. O., *The Presidential Constitution of Nigeria*, (C. Hurst & Co. Ltd., London, 1982), p. 37.

⁶ Jega, A.M., "The Political Economy of Nigerian Federalism", in Elaigwu, J.I. and Akindele, R.A. (eds.) *Foundations of Nigerian Federalism: 1960-1965*, vol. 3, (National Council on Intergovernmental Relations, Abuja, 1966), p. 166.

A federal state is not a mere loose alliance of independent states. Rather, it defines a sovereign state characterised by the union of particularly self-governing constituent units subordinate to a central government. The self-governing status of the component states is constitutionally entrenched and may not be altered by a unilateral decision of the central government⁷. Federalism entails protection of the interests of both the centre and member states. In the words of A.V. Dicey:

Federalism is a political intervention which is intended to reconcile national unity and power, with the maintenance of the rights of the separate member states⁸.

Closely related to the classical definitional approach is the idea that federalism is a design or a device. A foremost adherent to this approach is Livingstone. In his view, the essence of federalism lies not in the institutional or constitutional structures, but in the society itself. To him, federalism is a device by which the federal qualities of the society are articulated and protected⁹.

There is, however, the view that federalism is neither so institutional nor a design. Fredrick is an apostle of this school of thought. He argues that any particular design or pattern of competencies or jurisdiction is a short run phase of continually political reality. It is a process through which a number of political organization center into agreement or arrangements for working out

⁷ Wheare, *ibid.*

⁸ Cited in Elaigwu, J. I. and Akindele, R. I. (eds.) *Foundations of Nigerian Federalism: 1960-1995*, Vol. 3 (National Council on Intergovernmental Relations, Abuja, 1996), p. 38.

⁹ Livingstone, D. M., "The Advantages of Federalism", *Political Studies Quarterly*, vol. 10, January, 2006.

solutions, adopting joint policies and making decisions on joint problems¹⁰.

In a further attempt to avoid the pitfalls in Wheare's definition, a broad definition of federalism was adopted by Friedrich who also states that federalism is a process rather than a design. According to him, federalism is a process by which unity and diversity are politically organised and this process includes political phenomena, persons, institutions and ideas. He asserts: "federalism is a general principle of social organisation and that the degree of federalism in a political system is a function of sociological and not legal criteria"¹¹. Friedrich further asserted that the dynamics of federalism should be sought not within its legal construct or constitutional document, but in the social forces that link or underline the political process¹².

Kotz views federalism from two perspectives, normative or ideological and constitutional. The former is to the effect that conflict between people in plural societies arises as a result of their diverse interest while the later deals with constitutional sharing of powers between the general and constituent levels of government and the diffusion of powers¹³.

It is against this background that writers agree with Friedrich that federalism should be seen as a process by which unity and diversity

¹⁰ Fredrick, C. *Federalism is a Process: Trends of Political Arrangement*, Public Education Paper No. 7, (Centre for the Study of Federalism in Canada, 2008).

¹¹ Friedrich, cited in Dare, L. *Perspectives on Federalism*, (Aluyen, London, 1979), p. 31.

¹² *Ibid.*

¹³ Kotz, H., "Federalism: The State of the debate in South Africa", *The Nigerian Journal of Federalism*, 1994 at 1-2.

are politically organised and these processes include political phenomena, persons, ideas and institutions¹⁴. Federalism is not only a set of general principles of social organisation¹⁵, but also “a process of aggregation or disintegration... a temporary device holding together units that eventually stay together to aggregate or falls apart disaggregate”¹⁶.

From the various definitions, federalism is a process, usually actuated by social forces including diversity, by which there is a mechanism for powers and functions to be shared between a national central government and constituent units, for purposes of the unity, stability and development of the country. The arrangement is commonly by a constitutional device. Niki Tobi, JSC, in *Chief Adebisi Olafisoye v. Federal Republic of Nigeria*¹⁷ captures succinctly this constitutional design of federalism:

A federal Government will mean what the Constitution writer say it means. And this can be procured within the four walls of the Constitution. 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. Thus, the word federalism conveys different meanings in different Constitutions as the constitutional

¹⁴ See for example, Tella, C.M., Doho, A.H., and Bapeto, A., “The Evolution, Development and Practice of Federalism in Nigeria”, *Public Policy and Administrative Review*, December 2014, vol. 2, No. 4. p. 56.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, p. 57.

¹⁷ [2004] 4 NWLR (part 861) 580.

arrangements show particularly in the legislative lists¹⁸.

Forms or classification of federalism include quasi-federalism, co-operative federalism, organic federalism, dual federalism, decentralisation¹⁹. Other classifications are aggregate federalism²⁰, disintegrative or centrifugal federation²¹; spectrum federalism, that is, relative or limited federalism as postulated by Livingstone²².

The word ‘functional’ is an adjective of the word ‘function’, meaning “having, designed to have functions”;²³ having designed to fulfill a purpose. ‘Function’ means “special activity or purpose of a person or thing²⁴”. ‘Functionalism’ refers to the principle that the function of objects, etc should determine their design, the materials

¹⁸ *Ibid*, p. 649.

¹⁹ Jinadu, L.A. “A Note on the Theory of Federalism”, - Akinyemi, B.A, Cole, B.A. and Ofonagor, W. (eds.) *Readings on Federalism*, (Nigerian Institute of International Affairs, Lagos, 1979). Also See Jinadu 2007, Tella *et al*, *ibid*, p. 55.

²⁰ One in which previously sovereign states come together in a federation. This may arise as a result of external threat or the need for economic viability or to redraw colonial boundaries.

²¹ This diversification may arise out of the balkanisation or division of a formerly unitary states and also may be due to size, culture, historical and linguistic background.

²² *Ibid*.

²³ Hornby, A.S. *Oxford Advanced Lerner’s Dictionary*, (Oxford University Press, Oxford, 1974), p. 355.

²⁴ *Ibid*.

used, etc²⁵. ‘Functional architecture’ is used to mean designed to serve practical purposes, beauty of appearance being secondary²⁶.

By the word ‘sustainable’, it is meant the idea of sustaining something or a situation. Sustaining means “keep from falling or sinking”, keep up, maintain; that gives strength; not to falter²⁷.

The Conception and Birth of Nigeria

Before the conquest and colonisation of the different territories and nations making up the present day Nigeria, there were various communities, geo-politico-cultural ethnic groups that were independent of each other and of Britain. In the West, there were kingdoms some of which were centralised and with checks and balances, for example, Old Oyo Empire. In the South-South, there were also centralised kingdoms such as Benin Empire, centralised city states and various stateless societies. In the East, stateless societies were abound as no state organisation existed. In the Igbo society, political administration was by the Council of Elders constituted based on age consideration. In the North, the Emirate system of administration under the sultanate existed side by side with centralised empires such as Kanem-Bornu; kingdoms and chiefdoms.

²⁵ *Ibid.* Structural functionalism theory stipulates that society is a complex organisation of parts that function to fulfill some requirements and promote the needs of the whole. To the structural functionalist, all on-going societies possess an essential order, balance and coherence. A society will remain functional if first, most if not all the needs of the population are fulfilled, and second, that a sufficient population should participate in maintaining the system.

²⁶ *Ibid.*

²⁷ *Ibid.*, p. 888.

During the colonial period, the British adopted both direct and indirect rule system of administration. As a result of boundary disputes and the different and sometimes conflicting systems of administration among the people of Lagos, the River protectorate and Niger territories, the Lord Lugard Committee was set up to consider the future administration of Nigeria. The report of the committee led to the unification of the River protectorate and Niger territories to form Southern protectorate in 1900. In the same year, the Northern protectorate was also created for the administration of groups within the area. The remaining part of the Niger, for example, Idah, was merged with part of the Northern protectorate. The Crown Colony of Lagos served as the administrative headquarters from which the Governor-General operated with oversight from Britain. In 1906, all units under the Northern protectorate were amalgamated, and, in 1910, the Southern Protectorate and the Crown Colony, Lagos, were amalgamated to form the Colony and Protectorate of Southern Nigeria. While the Southern Protectorate had executive and legislative councils as part of the administrative system, there was nothing as such in the Northern Protectorate. In 1914, the Colony and protectorate of Southern Nigeria and the protectorate of Northern Nigeria were amalgamated into one unit, Nigeria, under the office of the Governor-General, Lord Fredrick Lugard who had the powers to legislate on all matters relating to the whole country.

The year 1939 marked the division of Nigeria as British colonial entity into three provinces (the Northern, Eastern and Western) from the two protectorates, by Bernard Bourdillon. The journey to Nigerian federalism is said to have begun with this decision. Subsequently, in 1946, the Richard's Constitution (which was arguably a quasi-federal constitution) further instituted regions to

replace the three existing provinces thereby introducing regionalism into Nigeria. In 1951, the Macpherson Constitution improved on the Richard's constitution by creating Houses of Representatives vested with powers to make laws for the country and Regional House of Assembly to make laws for the regions on specific matters. Between that time and when Nigeria attained independence in 1960, there were constitutional conferences²⁸ that encouraged the establishment of federalism in Nigeria.

With the emergence of the Littleton Constitution in 1954, Nigeria became formally a federal polity. The federation comprised the Northern, Western and Eastern regions, in addition to the federal Territory of the Southern Cameroons. Each of the regions was vested with executive powers, and enjoyed a large measure of autonomy. Both the 1960 and 1963 Constitutions devolved tremendous powers to the regions, which into themselves, became fulcrum of political power. Military regime, however, did not favour federalism as it adopted a unitary system. Under Major-General Aguiyi Ironsi, Nigeria was subjected to a unitary system by the promulgation of the obnoxious and unpopular Unification Decree No. 34 of May 1966, and the then Lieutenant-Colonel Gowon promulgated the Confederate Decree No. 8 of March 1967. While successive military governments did not promulgate in name pro-unitary or pro-confederate decrees, they retained the constitutional arrangement of federalism in the country, but in practice, governed the country substantially as a unitary state.

Functional Architecture of Nigerian Federalism

Before delving into the practical purpose that Nigerian federalism was designed to fulfill, it is worthwhile to identify its historical

²⁸ Such as those held in Ibadan in 1950, London in 1953 and Lagos in 1954.

origin in Nigeria. Federalism originated from the intergovernmental relations of the ancient Greece. There, under the legal relationships between the leagues and the city-states, the leagues represented the union of several city-states under a single administration, while the city states, like the states in Nigeria today, existed to oversee individual affairs. The leagues, then, were current structure of modern federalism while the various governments freely interacted; no direct contact between the citizens of the various governments was permitted²⁹. The origin of Nigerian federalism is traceable to the 1939 division of Nigeria into three provinces by Bernard Bourdillon during colonial administration, while the subsequent colonial and post-independence constitutions galvanised the federal system.

Various reasons may explain why a nation adopts a federal system of government. According to Wheare³⁰, people will adopt the federal system if they desire a single coercive force in some aspects and independence of the units in other aspects. Diversity is usually a call to federalism. In Nigeria, the factors that necessitated adoption of federalism include historical and colonial factor, heterogeneity and cultural differences, size and population, economic factor and fear of domination as a result of suspicion among the various ethnic groups, particularly the Hausa-Fulani, Yoruba and Igbo. The minority ethnic groups also expressed the fear that the major ethnic groups would dominate them. Another school, subscribed to by the nationalists, attributes the evolution of

²⁹ Odetunde, O.J., "The Federal System of Nigeria", in Salako, W.A. and Ayeni, A. E. (eds.) *Citizenship Education: A Concise Approach*, (G-Delong Prints, Lagos, 2004), p. 1-33, cited in Umoh, N. "Social Integration: A Nation-Building Strategy for Nigerian federalism", *Review of Public Administration and Management*, 2018, Volume 6, Issue 3, p. 1.

³⁰ *Ibid*, p. 10.

Nigerian federalism to the belief by the British that federalism was the answer to the particularistic tendencies of the different ethnic groups.

There is also the role of the nationalists who were pessimistic about the unity of the country. Even before the expression of cynicism by the nationalists, Sir Arthur Richards (Lord Milverton) in 1948 expressed his feelings on the accidental creation of Nigeria. He wrote:

It is only the accident of British suzerainty which has made Nigeria one country. It is still far from being one country or nation socially or even economically. Socially and politically there are deep differences between the major tribal groups. They do not speak the same language and they have highly divergent customs and ways of life and they represent different states of culture³¹.

Awolowo expressed the same view in his oft-quoted statement:

Nigeria is not a nation; it is a mere geographical expression. There are no 'Nigerians' in the same sense as there are 'English' or 'Welsh' or 'French'; the word Nigeria is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not³².

Awolowo quite frankly and forcefully reflected the sharpness of diversities of the Nigerian people and its negative effect on national

³¹ Quoted from Osuntokin, J., "Federalism: The Nigerian Experience", in Amuwo, K *et al* (eds.) *Federalism and Political Restructuring in Nigeria*, (Spectrum Books Limited, Ibadan, 1998), p. 99.

³² Awolowo, O. *Path to Nigerian Freedom*, (Faser and Faber, London, 1974).

unity and integration. Abubakar Tafawa Balewa was on the same level of skepticism about Nigeria's unity when he stated as follows:

...since the amalgamation of the Southern and Northern provinces in 1914, Nigeria has existed as one country only on paper... it is still far from being united. Nigerian unity is only a British intention for the country³³.

Nnamdi Azikiwe equally recognised the diverse nature of the Nigerian people that justified the adoption of a federal system of government in the country. Chukwuemeka Odimegwu Ojukwu expressed a similar feeling thus: "Nigeria is an amorphous group of individuals pretending to be a nation".

Although the view has been expressed that Nigerians were not consulted before amalgamation and a federal system was foisted on them and they never agreed to come together³⁴, the people in the over 400 ethnic groups in the country have lived together since the amalgamation. There is no doubt that the nationalists contributed to the idea of adopting federalism along the line. While that may not amount to consultation of the people as the nationalists were not elected representatives of the people, it can be taken that federalism emerged in the country as a result of bargain struck by the component units³⁵. Riker's preconditions for such a deal, namely,

³³ Balewa, A.T. was quoted by Osuntokun, J. "Federalism: The Nigerian Experience" in Amuno, K., *et al* (eds.) *Federalism and Political Restructuring in Nigeria*, (Spectrum Books Ltd, Ibadan, 1998), p. 99.

³⁴ Ozoigbo, B., "Federal Balancing in Nigeria: A Paradigm for Sustainable Democracy"p.68.

³⁵ Riker, W. "Federalism", in Polsby, N. and Stein, F.G. (eds.) *Government Institutions and Process*", (Wesley, New York, 1975) where the author viewed federalism as bargain by the component units. To him, the relevant parties concerned are ready and willing to make a deal.

to expand territorial control and ward off some external military diplomatic threat or opportunity did not occasion Nigerian federalism; his view is quite apt that in a centralised federal system, federal authority tends to overawe constituent governments, as against peripheralised federalism where subordinate governments have greater influence over the affairs of the whole country³⁶. Thus, the functional architecture of Nigerian federalism was aimed at divide and rule by the colonial authority in the midst of complex diversities of the Nigerian people; whereas, federalism, as a political philosophy aims at creating harmony from intrinsic or inherent political, social and economic symmetry vis-a-vis ethnic heterogeneity. According to Alli Mazrui³⁷, federalism is an institutionalisation of compromise relationship.

The Features and Practice of Nigerian Federalism

Federalism in Nigeria is unique, and, perhaps anomalous in certain respects due to the departure from classical theory or norm of federalism. Its features include government based on constitutionalism, constitutional sharing of political and revenue powers between the federal and state governments, and sometimes, the local government using the principle of decentralisation of powers. It is marked by party politics, which determines the nature of the federation, the configuration of powers and the prevalence of the rule of law³⁸. Furthermore, federal structures are expected to uphold a degree of self-rule for the constituent units with regards to some items or sectors, for example, education, health, etc. Aside

³⁶ *Ibid.*

³⁷ Mazrui, A., "Pluralism and National Integration" in Kuper, L. and Smith, M.G. (eds.) *Pluralism in Africa*, (University of California Press, Berkeley, 1971).

³⁸ United States Country Studies features show these features.

from the different historical background and experiences³⁹, the vagaries of power politics have contributed to the gravitation of federalism from the classical norm. Some of the salient features of Nigerian federalism will be discussed at different levels of analysis.

(a) **Constitutionalism**

Nigeria federalism is a creation of the Constitution and is encapsulated in the Constitution. This is clear from the history of constitutional development in the country till the 1999 Constitution (as amended)⁴⁰. Section 2 (2) of the Constitution states: "Nigeria shall be a Federation consisting of States and a Federal Capital Territory". Section 3(1) of the Constitution enumerates the States of the federation and the Federal Capital Territory, Abuja while section 3(6) provides for 768 local government areas and six (6) area councils.

Supremacy of the Constitution as a cardinal principle of constitutionalism is recognised as a foremost provision in section 1 of the Constitution. Many salient features of Nigerian federalism are enshrined in the written and rather rigid Constitution. They include a three tier system of government, powers of the different levels of government, division and sharing of governmental powers between the federal and the state governments, the supremacy of the federal government, existence of separation of powers, existence of a supreme court for judicial review and interpretation, unified and centralised police force, decentralisation of the public

³⁹ Gana, A. T., "Federalism and the National Question in Nigeria: A Theoretical Exploration", in Gana, A.T. and Egwu, S.G. (eds.) *Federalism in Africa: Framing the National Question*, (Trenton, N.J. Africa World Press, Inc, 2003).

⁴⁰ See Nwabueze, B.O., *A Constitutional History of Nigeria*, (Longman, in association with C. Hurst & Co., London, 1982).

service, and to some extent, the judiciary, the existence of a bicameral legislature at the federal level and a unicameral legislature at the state level, the principle of the federal character and provisions on constitutional amendment.

(b) Sharing or Division of Powers

The Exclusive Legislative List, enumerated in Part 1 of the Second Schedule to the Constitution, vests all powers over sixty eight (68) items therein stated in the Federal Government, whereas twenty eight (28) items are on the Concurrent Legislative List. Any item on the Residual List is within the power of the Federal Government under the doctrine of covering the field. While it may be accepted that federalism never intended that distribution of authority should be on a fifty-fifty basis, key items such as defence, foreign relations, custom and excise, citizenship, naturalisation and aliens, currency, coinage and legal tender are within the exclusive legislative power of the Federal Government. It is remarkable that even though that neither the Exclusive nor the Concurrent List grants the Federal Government powers "generally or fully" over agriculture and health, the Federal Government has always legislated and taken over policy decisions, sometimes controversial, on these items, and even have Ministries and Ministers in charge of them. The recent RUGA policy⁴¹ of the Federal Government is another eye-opener, and a clear demonstration that government policies hardly consider the realities of diversities in the country. In essence, Nigerian federalism is dysfunctional as a result of the questionable motivation or intention behind government policy.

⁴¹ This is a policy that required State Governments to make available several hectares of land for settlement by herdsmen in Nigeria. As a result of criticisms of policy, the Federal Government suspended its implementation in July 2019.

Furthermore, there is the occasional meddlesome posture of the federal government over matters that it has no power. A good example is the power to conduct or determine the conduct of local government election in the country. Creditably, the Supreme Court in *Attorney-General, Abia State and Others v Attorney-General of the Federation*⁴² held that by the combined effect of section 7(1) and items 11 and 12 of the Concurrent Legislative List of the Constitution, only the states have the powers to conduct or determine the conduct of local government election in the country. There is also the question whether the following items should be in the Exclusive Legislative List: labour including trade unions, industrial relations; condition, safety and welfare of labour, industrial disputes; prescribing a national minimum wage for the federation or any part thereof; and industrial arbitration. The issue of minimum wage and question whether States have the financial capacity to pay is related to the vexed issue of fiscal federalism.

(c) **Sharing of Revenue Powers**

One of the most important elements of the Constitution is the provision on revenue sharing arrangement between the three tiers of government. The sharing arrangement is at two levels, vertically between the federal, state and local government, and horizontally between the states or local governments. The federal government has a tremendous influence over the revenue sharing arrangement. The search for a generally accepted formula for revenue allocation has been a major concern in the country. Over the years, many commissions have been established to consider the issue of revenue allocation in Nigeria. Their reports were used as the basis for revenue allocation. The first of the Commissions set up by

⁴² [2002] 6 NWLR (part 763) 264.

government in the history of revenue sharing was in 1954 when the Chick Commission was inaugurated. This was followed by Raisaman (1957), Binn Commission (1964), Dina Commission (1968), Abayode Technical Committee (1977) and Okigbo Commission (1980). In 1989 a permanent commission known as National Revenue Mobilisation Allocation and Fiscal Commission (NRMFC) was set up.

Under the constitutional structures since 1960, provisions have since been made for sharing of revenue among the tiers of government; power of control over natural resources. As regards control, item 25 part 1 of the Exclusive Legislative List places mines, minerals including oil field, oil mining, geological surveys and natural gas under the exclusive legislative powers of the Federal Government. This provision is consistent with the provisions of the then Minerals Act⁴³ which vests all minerals in Nigeria in the Federal Government of Nigeria⁴⁴. Successive constitutions of 1979 and 1999 as well as some other legislation provide to the same effect⁴⁵ on acquisition rights.

The regions were entitled to payments out of general import duties and on specified products. Thirty percent of general import duties were paid into a distributable pool for the benefit of the regions⁴⁶. Import duties on petrol, diesel oil and tobacco were paid in full to the region to which the product was destined in full percentage less

⁴³ Now Minerals and Mining Act Cap. M12 Laws of the Federation of Nigeria, 2004).

⁴⁴ See also section 44(3) 1999 Constitution.

⁴⁵ See provisions of the Petroleum Act Cap P. 10 Laws of the Federation of Nigeria, 2004 and Land Use Act Cap L5 Laws of the Federation of Nigeria, 2004.

⁴⁶ Section 140(2) 1960 Constitution.

administrative expenses⁴⁷. The same formula was applied to excise duties on tobacco⁴⁸.

With respect to sharing of revenue, each region was entitled to be paid the amount due to it from its export of produce like groundnuts, hides and skin, palm oil, rubber, cocoa, etc⁴⁹. Royalty or mining rents derived from any region attracted the payment of fifty percent to it⁵⁰ while thirty percent went into Distributable Pool Account⁵¹. The revenue sharing formula was quite explicit, clear, direct and specific as to what the regions were entitled. The relevant provisions were accepted as requirements to fulfill the needs of the population; agitation against the formula was far-fetched.

In contrast, both the 1979 and 1999 Constitutions were nebulous in their provisions on revenue sharing formula especially as it affects entitlements of states. A distributable pool account was created called the Federation Account into which all resources collected by the Federal Government should be paid⁵². While the 1979 Constitution provides that the distribution to the federal, state and local governments from the Federation Account is to be “on such terms and in such a manner as may be prescribed by the National Assembly⁵³, the 1999 Constitution further provides for the principle of derivation in revenue allocation formula and of not less than thirteen percent (13%) of the revenue accruing to the federation account directly from any natural resources. Under section 162 of

⁴⁷ *Ibid.* Section 137 (1).

⁴⁸ *Ibid.* Section 138.

⁴⁹ *Ibid.* Section 139.

⁵⁰ *Ibid.* Section 140 (1).

⁵¹ *Ibid.* Section 140(2).

⁵² Section 149(1) 1979 Constitution.

⁵³ *Ibid.* Section 149(2)-(4).

the 1999 Constitution, both the President and National Assembly are vested with powers to determine the revenue allocation formula for the sharing of funds from the Federation Account. Section 162(2) of the 1999 Constitution provides:

The president, upon the receipt of advice from the Revenue Allocation and Fiscal Commission shall table before the National Assembly proposals for revenue allocation from the federation account and in determining the formula, the National Assembly shall take into account the allocation principles, especially, those of population, equality of states, internal revenue, land mass, terrain as well as population density.

Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the federation account directly from any natural resources.

The issue of what amounts to 13% came up for determination in *Attorney-General of Federation v Attorney-General of Abia State*⁵⁴. It was held, *inter alia*, that the proviso to section 162 (2) of the Constitution means that only oil revenue derived from the land surface of any littoral states that will entitle such a state to the 13% of the total revenue derivable there from and as such that calculation does not extend to the amount of oil revenue derived from the offshore, that is, sea extension of the Nigerian border. The judgment did not go well with the littoral states. Political solution was, however, applied to assuage the littoral states. Consequently, the Allocation of Revenue (Abolition of Dichotomy

⁵⁴ [2002] 6 NWLR (part 764) 543 at 66.

in the Application of the Principle of Derivation) Act, 2004 (Onshore/offshore Dichotomy Act, 2004) was enacted. The statute reads:

As from the commencement of this Act, the two hundred metre water depth isobaths contiguous to a state of the Federation shall be deemed to be a part of that state for the purpose of computing the revenue accruing to the Federation Account from the State pursuant to the provisions of this Constitution of the Federal Republic of Nigeria 1999 or any enactment.

It shall be immaterial, for the purposes of application of other principle of derivation, whether what was accruing to the Federation Account from a state is derived from natural resources located onshore or offshore.

Despite this legislation, twenty two Governors of the federation instituted an action in the Supreme Court, in *Attorney-General of Adamawa State and Others v Attorney-General of the Federation*⁵⁵, for the determination of the constitutionality of the Onshore/offshore Dichotomy Act, 2004 in the application of the principle of derivation. The case was unanimously dismissed by the court holding, that, while the Allocation of Revenue (Abolition of Dichotomy in the Application of the Principle of Derivation) Act, 2004 is concerned with the computation of revenue accruing to the Federation Account and notional extension of the state boundaries, the provision of section 44(3) of the 1999 Constitution which vests the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria, in the

⁵⁵ [2005] 18 NWLR (part 958) 581.

Government of the Federal Republic of Nigeria, etc, is about the ownership, control and management of natural resources by the Government of the Federation, because the objects of the provisions are not in conflict with the constitution since they are at variance.

A number of questions still beg for answers. Why are population, land mass, population density and terrain relevant in determining revenue allocation principles? How was 13% derivation entitlement arrived at? Why is there such a marked departure from the revenue sharing formula under the 1960 Constitution? Why is control of natural resources exclusive to the Federal Government? These questions resonate the necessity or otherwise for resource control agitations. Before commenting on the two opposing views on the matter, it is apposite to define resource control. Sagay has identified three components of resource control as follows:

- (a) The power and right of a community or state to raise funds by way of tax on persons, matters, services and materials within its territory.
- (b) The exclusive right to the ownership and control of resources, both natural and created within its territory.
- (c) The right to customs duties on goods destined for its territory and excise duties on goods manufactured in its territory⁵⁶.

The other meaning of resource control is the right to every state to control either wholly or partially resources derivable or found on its

⁵⁶ Sagay, I., "Nigeria Federalism, the Constitution and Resource Control" Text of a speech delivered at the Fourth Sensitisation programme organised by the Ibori Vanguard at the Lagoon Restaurant, Lagos, <www.daudo.com/igbuzor/htm>; see also Sagay, I., "Nigeria: Federalism, the Constitution and Resource Control" *The Guardian* 2001.

land⁵⁷. Resource control is the idea that ownership of natural resources that are found in a particular state should be vested in the state and not federal government. Being a federation, the state should pay a determinable tax out of such resources to the federal government. Advocates of resource control hinged their argument on the right of states to own and control resources found in them and entitled to amount due to it for export of such resources and pay a percentage as tax or royalty to the federal government. On the other hand, antagonists of resource control argue that “resources, both natural or in the form of royalty or taxation is owned collectively and remain in trust for common good and well-being of all Nigerians irrespective of where such revenue is realised from”⁵⁸. A pertinent question is whether the present constitutional provision contradicts principle of fiscal federalism. Will a reversion to the 1960 constitutional provision not check the battle to control the federal government (centre)? Will it check the federal government monopoly of disbursement of revenue and its attendant abuse as the kind that led to *Attorney-General of Lagos State v. Attorney-General of the Federation*⁵⁹. Certainly, the answers to these questions are in the affirmative.

(d) **Control of State Judiciary**

By the constitutional provisions on creation and operation of federal and state judiciaries, federalism is given recognition in the

⁵⁷ See for example, Ikpat, C. etal “Nigeria’s Mineral Resources: A Case for Resource Control”, <www.nigerdeltacongress.com/articles>.

⁵⁸ Ibrahim, B.Y. “Resource Control and the Nigerian Constitution”, 2005-2006 Volume 23-24 *ABULJ*, p. 110 at 118.

⁵⁹ (2005) 2 WRN1; see Inegbedion, N. A. and Omoregie, E., “Federalism in Nigeria: An Appraisal”, *Journal of Constitutional and Parliamentary Studies*, Vol. XXXIX Nos 1-4 January-December, 2005, p. 94.

country⁶⁰. All appointments to the judiciary, within the meaning of superior courts of record created by the Constitution, are made by the National Judicial Council (NJC) based on the advice of the Federal Judicial Service Commission or State Judicial Service Commission as the case may be. The National Judicial Council is vested with the powers to appoint and discipline including removal of judicial officers, funding the Council and matters relating to broad issues of policy and administration⁶¹. Under the constitutional provisions, the National Judicial Council is composed of 23 members. Out of this number, 19 members are the nominees of the Chief Justice of Nigeria (CJN) who is the chairman. All the state judiciaries and the Judiciary of the Federal Capital Territory are represented by 7 States for the duration of two years. The Chief Judges, the Grand Khadis, the Presidents, Customary Courts of Appeal and President, National Industrial Court of Nigeria are left out of the Council. Recommendations for all appointments to and removal from the judiciary aforesaid are made by the National Judicial Council based on the advice or recommendation of the Judicial Service Commission. Such recommendations are to the President in the case of appointments to federal courts and to the Governors in the case of appointments to states courts. The provisions erode the powers of the states to appoint and remove judges in their states, but confer the powers on a federal organ. This control by the federal unit of the judiciary is far from being federalism.

(e) Security, Public Safety and Order

Security of life and property is a fundamental term in the social contract matrix. This is a term undertaken to be performed by

⁶⁰ See Chapter VII part II of the Constitution on Federal Courts and State Courts respectively. See also Third Alteration of the Constitution on the new status of the National Court of Nigeria.

⁶¹ Part 1 of Third Schedule to the Constitution.

government under the 1999 Constitution. Section 14(2) (b) of that Constitution declares that “the security and welfare of the people shall be the primary purpose of government”. In a bid to perform this function, the Nigeria Police Force is established⁶² and placed under the command of the Inspector-General of Police and any contingents of the Nigeria Police Force stationed in the State under the command of the Commissioner of Police of that state, but subject to the Inspector-General of the Police⁶³. In the case of the federation, section 215(2) of the Constitution provides:

The President or such other Minister of the Government of the federation as he may authorise in that behalf may give to the Inspector-General of Police such lawful directions with respect to the maintenance and securing of the public safety and public order as he may consider necessary, and the Inspector-General of Police shall comply with those directions or cause them to be complied with.

In the case of the States, section 215(4) of the Constitution provides:

Subject to the provisions of this section, the Governor of a State or such Commissioner of the Government of the State as he may authorise in that behalf may give to the Commissioner of Police of that State such lawful directions with respect to the maintenance and securing of public safety and public order within the State as he may consider necessary, and the Commissioner of Police shall

⁶² Section 214(1) 1999 Constitution.

⁶³ *Ibid.* Section 215 (2).

comply with those directions or cause them to be complied.

Provided that before carrying out such directions under the foregoing provisions of this subsection the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the Federation as may be authorised in that behalf by the President for his directions.

This provision was interpreted and applied in *Attorney-General, Anambra State v Attorney-General, Federation*⁶⁴ where the Inspector-General of Police, in purportedly acting in obedience to a court order, withdrew the police security attached to the Governor of Anambra State. The Governor instituted an action challenging the action of the Inspector-General of Police. It was held that the Governor could issue instructions to the Commissioner of Police in charge of the state command. Under section 215(5) of the Constitution, the jurisdiction of court is ousted as to the question whether any, and if so, what, directions have been given under this section.

There is the question of the legislative competence of the Federal Government in respect of public order and public security. Does it cover power of the National assembly to make laws for the federation alone with respect to the maintenance and securing of public safety and public order? Or does it cover also power to so make laws for the states? Section 11 of the 1999 Constitution provides, on this matter, as follows:

⁶⁴ Unreported, Judgment delivered on 31st May, 2005.

S. 11(1) The National Assembly may make laws for the Federation or any part thereof with respect to the maintenance and securing or public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National assembly as essential supplies and services.

By section 11(2) of the Constitution “Nothing... shall preclude a House of Assembly from making laws with respect to the matters referred to in this section...”

Section 11 of the 1979 Constitution (in *pari materia* with section 11 of the 1999 Constitution) was interpreted in *Attorney-General, Ogun State and Others v Attorney-General of the Federation*⁶⁵ where Ogun, Bendel and Borno states sued the federal government and the actions were consolidated. The case of the plaintiffs was that the Constitution of the Federal Republic of Nigeria (Adaptation of Public Order Act) order 1981 was not a valid instrument made by the president in which the president adapted certain provisions of the Public Order Decree 1979⁶⁶. The plaintiffs’ argument was that only the State Governor could adapt the Public Order Decree promulgated by the Military Government in 1979, to bring it into conformity with the provisions of the 1979 Constitution as stated in section 274, because the Decree took effect as a state law by virtue of section 274(2) of the then 1979 Constitution (section 315(2) 1999 Constitution). Alternatively, the plaintiffs argued that if the Decree was regarded as having taken effect as an Act of the National Assembly, it was wrong of the

⁶⁵ [1982] 1-2 S.C. 13.

⁶⁶ Now Public Order Act Cap. P42 Laws of the Federation of Nigeria, 2004.

president to have substituted “Commissioner of Police” for “Military Administrator”, and “Attorney-General of the Federation” for “Attorney-General of the State” under the enactment. The Supreme Court held that the Decree took effect as a federal enactment, and as a result, only the president could adopt the Decree by virtue of section 274(2) of the 1979 Constitution. The court further held that the purpose on both the federal and state governments to make laws with regard to maintenance and securing of public order and public safety, and that the Public Order Decree was a law to regulate “the conduct, control of public assemblies, meetings and procession” which was “one particular albeit very important aspect of what after all is a wide field” of public order.

Inegbedion and Omoregie⁶⁷ put up a two prong argument on the interpretation of section 11 of the Constitution. In summing up his argument, he stated:

Thus, by vesting the Federal Government with this special power outside the normal legislative competence, in times of war, it can be reasonably implied that the earlier grant of power in the same section could be restricted to matters to which it is given power to make laws.

This appears to make a mountain out of a molehill by his so called “more functional interpretation of Section 11 of the 1999 Constitution”⁶⁸. By section 11 (1) and (2) of the Constitution, both the National Assembly and State House of Assembly are empowered to make laws currently with respect to the maintenance

⁶⁷ *Ibid* p. 86.

⁶⁸ *Ibid*.

and securing of public safety and public order and providing, maintaining and securing of such supplies and services as may be designated by the National Assembly as essential supplies and services. The legislative competence of the National Assembly is enlarged beyond matters listed in the Exclusive Legislative List on two grounds. First, during any period when the Federation is at war, the National Assembly may make such laws for the peace, order and good government of the Federation or any part thereof, as may appear to it to be necessary or expedient for the defence of the federation⁶⁹. Second, at any time when any House of Assembly of a State is unable to perform its functions by reason of the situation prevailing in that State, the National Assembly may make such laws for the peace, order and good government of that State with respect to matters on which a House of Assembly make may laws if they are laws enacted by the House of Assembly of the State, but not power to remove the Governor or the Deputy Governor of the State from office⁷⁰.

(f) Offences, Criminal Procedure and Procedure of Courts Laws

From the provisions of the constitutions that have ever been adopted in the country, creation of offences, criminal procedure and procedure of courts of law are neither listed in the Exclusive Legislative List nor in the Concurrent Legislative List. Rather, these items have been taken to be residual matters⁷¹. Thus, both federal and state governments can, within their legislative competencies, make laws on creation of offences, criminal procedure and of courts of law in accordance with true federalism.

⁶⁹ Section 11(3) of the 1999 Constitution.

⁷⁰ *Ibid.* Section 11(4).

⁷¹ Nwabueze, B.O., *Federalism in Nigeria under the Presidential Constitution*, (Sweet & Maxwell, London, 1983), p. 87.

For example, part III section 2 to the Second Schedule (read with section 4) of the 1999 Constitution provides:

In this Schedule, references to incidental and supplementary matters include, without prejudice to their generality, references to –

- (a) offences;
- (b) the jurisdiction, powers, practice and procedure of courts of law; and
- (c)

In this regard, item 68 in the Exclusive Legislative List in Part 1, Second Schedule of the 1999 Constitution reads: “Any matter incidental or supplementary to any matter mentioned elsewhere in this list”. This means that the federal government can, within its legislative competence, make laws for the creation of offences, criminal procedure and procedure of courts of law.

(g) Single and Centralised Police and other Governmental Security Services

Police and other governmental security services established by law is listed as item 45 in the Exclusive Legislative List in Part 1, Second Schedule to the 1999 Constitution. Furthermore, section 214(1) of the Constitution provides:

There shall be a Police Force for Nigeria, which shall be known as the Nigeria Police Force, and subject to the provisions of this section no other police force shall be established for the Federation or any part thereof.

The meaning of this provision is that there shall only be a single Police Force established in the country and by the federal

government. States and local governments are excluded from establishing Police Force. The Nigeria Police Force and any contingents of the Force placed in the State are under the command of the Inspector-General of Police who is appointed by the President who by himself or authorised relevant Minister may give directions to the Inspector-General of Police⁷². Although the Governor of State or the authorised relevant Commissioner may give directions to the Commissioner of Police⁷³ before carrying out such directions, the Commissioner of Police may request that the matter be referred to the President or such Minister of the Government of the federation as may be authorised in that behalf by the President for his directions. Thus, the Federal Government has ultimate control of the Nigeria Police Force as well as other government security service or agencies. In a sense, the States lack the means of enforcement of laws made by them⁷⁴. It is partly this situation that generates the debate on State Police⁷⁵ as under section 105(7) of the 1963 Constitution which authorised establishment of local police forces at provincial level. For example, the Local Government Police Law, 1959 of the Western Region confirmed existing police forces in the Region, like in the Northern Region had authorised every Local Government Council with the approval of the Minister for Local Government to establish a Force. This was an expression of autonomy, independence and federalism.

⁷² Section 215 of the 1999 Constitution.

⁷³ Section 215(4) 1999 Constitution as interpreted in *Attorney-General, Anambra State v Attorney-General, Federation*, Unreported, Judgment delivered on 31st May, 2005.

⁷⁴ Irikefe, JSC in *Attorney-General, Ogun State & Ors v. Attorney-General, Federation* (1982) 1-2 S.C. 13 at 78.

⁷⁵ See the argument canvassed on the debate in Badaiki, A. D. "Centralisation and Control of the Nigeria Police Force: Revisiting the Debate on State Police", (2014) *Nigerian Law and Practice Journal (NL&PJ)*, pp. 173-194.

(h) Acquisition and Land Tenure System

The acquisition and tenure of land is stated to be an incidental and a supplementary matter in Part III, Second Schedule to the 1999 Constitution. Section 2 of that part reads, *inter alia*: “In this Schedule, references to incidental and supplementary matters include, without prejudice to their generality, references to – ... (c) the acquisition and tenure of land”. In such a matter that is incidental or supplementary to any matter mentioned in the Exclusive Legislative List, the Federal Government has legislative competence. By the Land Use Act, all land in a state are vested in the Governor of the State. How then can the RUGA policy be justified?

(i) Bar System

Professional occupation that may be designated by the National Assembly is an item under the Exclusive Legislative List in the 1999 Constitution. The legal profession is regulated by the Federal Government. The Bar system is centralised under the Federal Government in terms of centralisation of legal education, enrollment as a member of the Nigerian Bar, in which there is a fusion of the functions of an advocate and solicitor. The State and local government have no competence to legislate or in any way control the operation of the legal profession and Bar system.

Assessment of the Functionality and Sustainability of Nigerian Federalism

It is beyond conjecture the question whether Nigerian federalism is functional and sustainable. There are cogent arguments in support or against the functionality and dysfunctionality of Nigerian federalism on the one hand, and sustainability and non-sustainability, on the other hand.

(a) **Functionality of Nigerian Federalism**

In theory, there are good grounds to advance the view that federalism is quite functional in Nigeria. In practice, however, there is also weight for dysfunctionality argument.

- (i) **Functionality Argument:** Section 15 of the Constitution contains well formulated creed to serve as political objectives and directive principles of state policy. It reads:

S. 15 (1) The motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress.

(2) 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.

(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 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 terms of the political objectives of State Policy, the policy of encouraging national integration is to be achieved by the duties imposed on the state to that effect. These include encouragement of free mobility of people, goods and services, securing residence rights for every citizen, encouragement of inter-ethno religious marriages and cross-cutting associations as well as fostering of belonging and of involvement of various peoples of the federation. On the part of the citizens, section 24 of the Constitution enjoins them to, *inter alia* “abide by this Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, the National Pledge, and legitimate authorities”.

These duties are reinforced by national ethic expressed as “Discipline, Integrity, Dignity of Labour, Social Justice, Religious Tolerance, Self-reliance and Patriotism”. Apart from that these provisions are not justiceable, their actual practices by governments and citizens are far between, except in marital interaction and

formation of cross-cutting associations. Increasing instances of corruption and abuse of power further dampens national integration, unity, faith, peace and progress in Nigeria.

- (1) Power Sharing: Many mechanisms have been put in place for power sharing, for example, constitutional provisions and division of power and quota system. There is a conscious effort and constitutional provision to ensure that appointments are balanced in terms of the constituent units by the federal character principle. Section 14(3) of the Constitution provides that 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. The social order is founded on ideals of Freedom, Equality and Justice⁷⁶. True federalism affords states the benefit of deploying their resources for their own development. Thus, Nigeria is often regarded as a pioneer and an example in Africa in the use of power-sharing mechanisms and practices to promote inter-ethnic inclusiveness, or discourage sectional imbalance and bias in decision-making processes⁷⁷.
- (2) Sharing of Revenue Power: There is lopsidedness in the fiscal assignments, although it has helped to reduce inter-governmental tension.
- (3) Control of State Judiciary: States have a measure of control over their judiciaries as they are not completely

⁷⁶ Section 17 of the 1999 Constitution.

⁷⁷ Suberu, R. T. "States Creation and the Political Economy of Nigerian Federalism", in Anuwo, K. *et al.* (eds.) *Federalism and Political Restructuring in Nigeria*, (Spectrum Books Limited, Ibadan, 1998).

left out in the appointment, discipline and removal of their judicial officers.

- (4) Security, Public Safety and Public Order: To some extent, States have some powers on security, public safety and public order.
- (5) Single and centralised police: Although there is a single and centralised Nigeria Police Force in the country, State Governors are, to some extent, constitutionally entitled to give directions or instructions to the federally-controlled Police Force.
- (6) Relative autonomy and independence. There is relative autonomy and independence of the states (federating units) under the present democratic dispensation. Nigeria has been fairly united, but it is worrisome that while many nations are mobilising their citizens for development, Nigeria is still being pre-occupied with unity. It is not a good omen for Nigerian federalism.

(ii) Dysfunctionality Argument

Elements in the dysfunctionality argument in Nigerian federalism are identified as follows:

- (1) There is heightening of ethnic tension, mutual mistrust among ethnic groups, increasing fear by the minority of domination by the majority. There is increasing disunity, instability and tension in the Nigerian federation thereby casting doubt over its adaptability to solving the nation's problems. For example, Boko-Haram, Arewa Consultative Forum, Ijaw Youth Council (IYC), Ohanaeze-Ndigbo, Indigenous People of Biafra (IPOB), Movement for the Actualisation of Sovereign State of Biafra

(MASSOB)and Meyetti Allah. Failure to practice true federalism in the country has engendered manipulation of people. Manipulation of people by using ethnic, religious and sectional differences has brought a lot of harm to Nigeria. Among other things, “it breaks the unity of our people and turns their attention away from the urgent struggle for national economic development and political progress...”⁷⁸.

- (2) Ethnic groups and states are in conflict and competition for scarce resources. They are in keen competition for the strategic resources of their respective societies.
- (3) There is a general feeling of neglect and marginalisation by the oil producing Niger Delta region, some other minorities and even majority of South East who continue to see themselves as being ill treated as a result of their defeat in the Nigerian Civil War. It is without dissimulation that majority of Nigerians live in abject poverty; unemployment rate is a source of despair to many youths and their families. General disillusionment exists all over.
- (4) Unending agitation for restructuring, national conference and political autonomy are perhaps the strongest evidence that all is still not well with Nigerian federalism. The cry for true federalism is the relief to instability. Oil politics cannot be

⁷⁸ Directorate for Social Mobilisation (MAMSER), “The Dangers of Ethnic, Religious and Sectional Manipulations”, *Political Education Manual Towards a Free and Democratic Society*, Directorate for Social Mobilisation, Abuja, 1989, pp. 29-30.

divorced from the crisis facing the Nigerian federalism. As Samuel Ugo puts it:

There exists a strong link between oil and the crisis facing the Nigerian federation. This crisis has intensified the struggle among dominant groups over who controls the federal government. The result of this state of affairs is instability⁷⁹.

- (5) Absence of balance in political, military, cabinet and public service appointments is evident. There is misuse and abuse of the quota system. A situation of treating some parts and people of Nigeria as servants or second class citizens while others are masters and first class citizens cannot augur well for national integration and stability. State creation, *per se*, has not solved the problem of national integration.
- (6) Uneven development is commonplace. In a true federal system, development is evenly distributed and not concentrated at one level (the centre).
- (7) There are dangerous rivalries between the centre and the constituent parts.
- (8) Insecurity, violence, inter-communal and ethno-religious conflicts are rife.
- (9) There is lopsidedness in the fiscal assignments or allocation resulting in resource control agitation. The federal government has consistently received the largest allocation, even though in sharing of VAT revenue, the State governments received the

⁷⁹ Ugo, S.C., "Resource Control and its Challenges to Nigerian Federalism", *The Constitution*, Vol. 4, No. 4 December 2004, p. 59 at 69.

highest figure followed by local government while the federal government receives the least. Under the current revenue allocation, formula, the federal government share is 50%, state government 24%, local government 20% while special funds are allocated 6.5%. The formula for sharing VAT is 15% for Federal government, 50% for state and 35% for local government.⁸⁰

- (10) Functions with high rate of returns such as power supply, port management are assigned to the federal government while functions that are of social assistance with low economic return are assigned to the states and local governments. There is no defined role between the federal, state and local government clearly stating responsibility in respect of many conflicting functions such as education and health.
- (11) Dysfunctionality of the numerous governance institutions in the country are evidence of the failure of leadership.
- (12) On power sharing, there is no general standard as to the quantum of items that should come under any list⁸¹. There is no defined role between the federal, state and local government with respect to many conflicting functions such as education and health.

(b) Sustainability of Nigerian Federalism

⁸⁰ See p. 21 Federal Office of Statistics.

⁸¹ Ijalaiye, D. O., "The Imperatives of Federal/State Relations in a Fledgling Democracy Implications for Nigeria", Nigerian Institute of Advanced Legal Studies, Lagos, 2001, p. 16.

(i) **Sustainability**

The argument for functionality of Nigerian federalism justifies its sustainability.

(ii) **Non-sustainability**

A critical examination of the history of Nigeria since her adoption of federalism coupled with recurrent trends in the country creates a doubt as to the sustainability of federalism in its present state in the country. Highlights of the non-sustainability argument are enumerated.

- (a) Studies have shown that there is a subtle shift from federalism towards a unitary state⁸². Nigeria's federal system is highly centralised. As observed by Coleman,⁸³ "excessive centralisation and statism of most developing countries... not only means greater vulnerability as a result of unfulfilment of populist expectation, it also means heightened inefficiency".
- (b) Most Nigerian leaders and Nigerians do not feel and think federal, as one people with one common, self-interest, capable, where necessary, to override most other considerations of small interests⁸⁴. The feeling is "my good" and not "the good for all". Elaigwu had argued that historically Nigerian federalism has within it the seeds of discord even though it serves as a mechanism for compromise. He further stated that federalism can be used as a mechanism for effecting compromise in a multinational state such

⁸² See for example, Guobadia, A., *Nigeria: The Legal Dynamics of Her Constitutional Development – An Appraisal*, (Nigerian Institute of Advanced Legal Studies, Lagos, 1994), p. 11.

⁸³ Coleman, J. S., in Peil, M. (ed.) *Nigerian Politics: The Peoples View*, (Cassell, London, 1976).

⁸⁴ Majekodunmi *supra* (n.1) p.117.

as Nigeria for a long while. He agreed that if federalism is to serve Nigeria well, there must be greater commitment to ideals and better understanding of the value of federalism⁸⁵.

- (c) The sovereignty of Nigeria⁸⁶ is for the entire country, but with the practice of federalism, autonomy and independence of the federating units are limited while the sovereignty of the Federal Government is unlimited. Sovereignty appears, therefore, not to be truly co-owned by the federating units contrary to the ideals of true federalism.

Challenges

Aside from those that emerge from the discourse so far, other challenges to Nigerian federalism include the following:

1. Nigeria's federal system is highly centralised⁸⁷. Government appears to be far from the people whose expectations are hardly met by a system that is trapped by the tentacles of inefficiency⁸⁸.
2. There are ambiguous and questionable constitutional provisions. The definition of indigeneship in section 31 of the Constitution is permanently exclusive rather than inclusive of many Nigerians. It reads:

⁸⁵ Elaigwu, I.J, *Nigeria's Federal Balance: Conflicts and Compromises in the Political System*, Postgraduate Open Lecture Series, Vol. 1 No 4 January, (University of Jos, Jos, 1984).

⁸⁶ Section 2(1) of the Constitution provides that "Nigeria is one indivisible and indissoluble Sovereign State".

⁸⁷ This is a sharp contrast to Switzerland, which, though being a small country, is one of the most decentralised countries in the world: see Koller, A., *Swiss Federation in Roundtable in Mechanism of Inter-Governmental Relation*, Institute of Social Sciences, New Delhi, 2002, p.27.

⁸⁸ Coleman, J.S. in Peil, M. *supra* (n.83).

S. 31. For the purposes of this Chapter, a parent or grandparent of a person shall be deemed to be a citizen of Nigeria if at the time of the birth of that person such parent or grandparent would have possessed that status by birth if he had been alive on the date of independence; and in this section, "the date of independence" has the meaning assigned to it in section 25 (2) of this Constitution.

Since the federal character policy on equitable distribution of public opportunities and resources among Nigerians, is based on indigenes, migrants are not indigenes.

3. Nigerian federalism suffers pathological structural imbalance. The size of the north is equal to the sum of the other two parts, the west and east. The question is not that there should be mathematical equality of size of the constituent units, but too great a disparity as to make one constituent unit permanently dominant in collective decisions, results into unitary centralism rather than federalism⁸⁹. In his law of federal instability, Mill stated that "a federation is morbid if one part of the federation is bigger than the sum of the other parts"⁹⁰.
4. Asymmetric power relationships between and among the component units of the federation generates negative consequences. There are complaints of domination and marginalisation. The North grieves that the region is educationally disadvantaged and for a long time was a reason

⁸⁹ Oriuwene, O.B., "The Challenges and Pathologies of Nigerian Federalism" *Social Science and Law Journal of Policy Review and Development Strategies (SSLJ PRDS)*, vol. 6, No. 1, March 2018, p. 80.

⁹⁰ Mill, quoted in Ayoade, J.A.A., "Federalism in Nigeria" being a Faculty Lecture delivered at the University of Ibadan, Ibadan, Nigeria, 1998.

for complaining of marginalisation of the north by the South. The South is aggrieved by what it calls political domination by the North. References are made to how the most senior army officer, Brigadier Ogundipe, was prevented from becoming the Head of State after the 1966 *coup d'état*⁹¹. The appointment of Olusegun Obasanjo as head of state in 1976 and his election as president in 1999; the emergence of Goodluck Jonathan as president after the death of Musa Yar'Adua in 2010 and his (Goodluck Jonathan's) subsequent election as president in 2011 were a mere interlude. The annulment of the June 12, 1993 presidential election won *de facto* by M.K.O. Abiola was an expression of the marginalisation of the South; the declaration of June 12 as democracy by President Muhammadu Buhari is a political gimmick and hypocrisy. North-South dichotomy remains a major current in Nigerian federalism and body politic.

5. The characteristics of Nigerian federalism are threats to nation-building. Loyalty is to the competing constituent units and the ideologies and stereotypes of their individual founding fathers such as Ahmadu Bello, Obafemi Awolowo, and Nnamdi Azikiwe.
6. There is the challenge of distributive federalism and politics of state and local government creation. There appears to be too many states all of which were created by the Military⁹². The proliferation of states started with the agitation by minority groups in order to avoid domination. This led to the creation of

⁹¹ Oluleye, J. J., *Military Leadership in Nigeria 1966-1979*, (University Press Limited, 1985), p. 38.

⁹² This contrasts with the United States, 50 states plus 2 federacies, 3 local home-rule territories, 3 unincorporated territories; Australia, 6 states plus 4 administered territories, 3 territories and 1 capital territory; Canada, 10 provinces plus 2 territories; India 25 states plus 8 union territories, Malaysia, 13 states; Switzerland, 26 cantons.

Mid-Western region in 1963; twelve states in 1967; nineteen states in 1976; twenty one states in 1987; thirty states in 1991 and thirty six states in 1996. While these creations were attempts to bring government and development close to the people, and balance the imbalance in the political structure of the Nigerian polity, it is incontrovertible the view that the more states in the country, the stronger the centre, but weaker will be the component state units⁹³.

7. A fundamental challenge to federalism in Nigeria is the issue of legitimacy, ethnic loyalties and statism as against loyalty to the nation, sometimes to a point of leaving the central authority bereft of sustainable legitimacy⁹⁴.
8. There is occasional absence of positive intergovernmental relation.
9. There is also misapplication and non-application of federalism especially as it affects power distribution⁹⁵.
10. There is also over-dependence by the federal and constituent units on centralism of proceeds of natural resources for purposes of sharing same.
11. Centralisation of powers at the federal level is one of the greatest challenges to Nigerian federalism. According to Tamuno, “successive military rulers at the federal and state levels” are responsible for “robust centralism”⁹⁶.

Conclusion

⁹³ Ozoigbo *supra* (n.34) p.69.

⁹⁴ Tella *et al supra* (n.14) p.54.

⁹⁵ Awa, E.O., *Issues in Federalism*, Ethiope Publishing Corporation, Benin City, 1976.

⁹⁶ Tamuno, T.N., “Nigeria: its people and its Problems” in Suberu, *et al* (eds.) *Nigeria Federation in Crisis: Critical Perspectives and Political Options*, (John Archer Publishers, 1989) p. 29.

Nigerian federalism is born out of the plural characteristic of the country. It was great wisdom on the part of Nigeria's foremost nationalists to toe the line of the British to establish a federal framework. It was enshrined in the 1960, 1963, 1979 and 1999 Constitutions. Since federalism is creative and flexible enough to incorporate several accommodation formulas⁹⁷, Nigerian federalism has undergone several structural and fiscal changes and reformations in line with emergent new realities. The varying historical backgrounds and experiences as well as the vagaries of power politics have contributed to the departure of federation from the norm of classical federalism. Nigeria's practice of federalism is fraught with pitfalls and flaws, notwithstanding that there is no perfect federalism or perfect politics. There are instances where governments have violated the principles of federalism. Thus, in theory, Nigeria can be said to be operating the federal system of government, but in practice, the country is gravitating towards the pole of unitary system. Nigeria has not been forthright applying the principle of federalism to the letter, hence, Nigerian federalism is a façade being manipulated for self-serving ends. Rather than improving the quality of governance and practice, it tends to accentuate misgovernance, lack of adequate development, ethno-religious chasm, insecurity, corruption and poverty. Its frail nature makes it dysfunctional in many respects and to have a high probability of not being sustainable. This is especially so because Nigerians and their leaders are generally not ideologically committed to its maintenance. The systematic dysfunction has culminated in unending violence, inter-ethnic and inter-regional confrontation, hate speeches, etc. These omens portend that the present architecture of Nigerian federalism is functional to a limited extent, and, is not sustainable.

⁹⁷ Majekodunmi, *supra* (n.1) p.109.

A lot still remains to be done to improve on the current practice of the federal system of government. The hue and cry as to changing the *status quo* will go to no issue until Nigerian federalism is revisited; sharing power and revenue formulae are recalibrated within the matrix of resource control by the states. Federalism is a dynamic process, and a viable system for the allocation of power between governments at different tiers. For it to be so, what is needed is to revert to the old legal order or substantially that order under the 1963 Constitution in which there was a form of just power sharing and resource control by the regions. This is a sure way to win battle to control the resources at the centre.

Recommendations

The following recommendations are proffered:

1. There should be restructuring of the country's federal system. Some suggest that the country should be restructured into provinces or regions along the existing six geo-political zones. Each of such constituent units in the federation should have its constitution, and all such constituent units should have their own constitutions different from that of the centre but not contrary to it. And that they should also have Supreme Courts, but some matters should be under the jurisdiction of the central Supreme Court. These will be very difficult to effect. What should be done is that there should be restructuring in terms of devolution of powers. The Constitution should undergo a comprehensive amendment. The Report of the 2014 National Conference should be a guide.
2. The Police Force for Nigeria should be decentralised and the suggested constituent units should have their individual police force. A single police force for the country is not enough.

3. The principle of power sharing in the Legislative Lists should be reviewed.
4. Each constituent unit should be allowed to have autonomy to appoint and discipline its judicial officers. This requires a restructuring of the system under which the National Judicial Council appoints all judicial officers, both for the Federal Courts and the State High Courts.
5. Restructuring of the federal character principle and quota system for public civil service employment and other benefits should be on the basis of equality and merit across the constituent units, irrespective of the number of local governments or population of the constituents.
6. Commitment to patriotism and loyalty to the nation should be effectively encouraged. Nigerians must be made to think of themselves as a people with common self-interest. In this connection, both the leaders and followers should have a feeling of not only patriotism, but also federalism. Negative thoughts and skepticism about federal system should be erased by political education and enlightenment of the citizens, and propagate the positive virtues of federalism. These orientations must be matched with people-oriented economic reform agenda that can accelerate economic growth and development for the people.
7. There should be greater autonomy for the constituent units from the federal central unit. The centre should be charged with guiding and overseeing the constituent units. Each constituent unit should be in charge of the revenue generated from there, and should only pay tax to the centre. True federalism guarantees resource control. A system where the central government compels federating units to accept what is thrown at them is an aberration of federalism. Constituent of

residence, acquired where a person has lived in the constituent for at least a year, should, in addition to natural state of origin be the determinant of a person's citizenship or place of origin in the country. It should therefore be liberalised the practice of changing one's place of origin to another on the basis of residence. All traces of unitary system of government should be expunged from Nigeria's system of federalism and allow the degree of freedom and autonomy consistent with federalism. Sovereignty should be co-owned by the federating units.

8. Viable and virile institutions should be evolved and old ones strengthened to be immune to sectionalism, ethnic and religious sentiments.