

# Towards A More Perfect Union in Nigeria: Examining the Role of The 1999 Constitution of The Federal Republic of Nigeria (As Amended)

D.O Okanyi, Ugochukwu Charles Kanu\*, Leonard Ibekwe Ugwu

*Department Criminal Litigation, Nigerian Law School, Nigeria*

*\*Corresponding Author*

**Abstract:** The history of the Federal Republic of Nigeria can be said to be replete with the search for effective and efficient models of governance to aid harmonious co-existence among the federating units. This has unfortunately led to an unending discussion on constitutional restructuring. The Legal framework and the institutions charged with the responsibilities of developing these models is and are established by the 1999 Constitution of the Federal Republic of Nigeria (as amended). Nigeria is increasingly becoming a theatre of war and terrorism centre where human life is not valued. Nigeria is stressed and distressed, with 'revolutionary pressures' everywhere. How did we get to this gridlock? How do we get out of it? And where do we go from here? Why is a country that was once ranked with India, Malaysia, Singapore, and South Korea still moving in circles instead of moving up? Why are we still a country in transition, more than a century after the Amalgamation? Are we fated to be a banana republic? This paper is to examine, cross-examine and re-examine these and other questions. It is the view of the researchers that all though the 1999 Constitution of the Federal Republic of Nigeria (as amended) is not a perfect document, the major problem is that those saddled with the responsibility of implementing the provisions of the constitution are allowing the primordial sentiments of ethnicity and religious inclinations to becloud their sense of patriotism and nationhood, hence the constitution is implemented more in breach and default. There is therefore the need for a mental re-orientation and national re-birth to forge a greater sense of unity among the diverse ethnic groups that make up the Nigerian nation. The paper concludes by suggesting for the rapid mental renovation of political office holders and all citizens to embrace the rule of law where justice, fairness, and equity will regulate human conduct. This will ultimately metamorphosed into building a strong institution rather than strong personalities in Nigeria. The researchers ultimately advocates for sincere implementation of the provisions of the constitution as it is, pending constitutional amendment. The research methodology utilized by the researchers is the Qualitative Research methodology.

**Keywords:** Federalism; Federal Character; Federal Character Commission; Supremacy of the Constitution.

## I. INTRODUCTION

The resurgence of debates on constitutional role of Ensuring unity in Nigeria is probably because a Constitution is the foundation of a legal and political system. The amalgamation of the Northern and Southern protectorates of

Nigeria in 1914<sup>1</sup>, laid the foundation for the practice of Federalism in Nigeria which was further concretized by other constitutional provisions starting from the 1954<sup>2</sup> constitution uptill the 1999 CFRN as amended. This underscores the fact that the nation, Nigeria has been in search of true federalism through various constitutional experimentations, yet, there is no end in sight for the search as the country appears more divided now than it was before the amalgamation. This failure probably explains why agitated Nigerians are still clamouring for self-determination (including resource control) which in recent time has snowballed into violence. In the Southeast is the Indigenous People of Biafra (IPOB) led by Nnamdi Kanu; In the Southwest is the Odua Peoples Congress and now Yoruba Nation agitation led by Sunday Igboho. Suffice to say that Nigeria has come a long way in its political and constitutional evolution. Nigeria has enacted roughly five Constitutions between independence and now, though one was inoperative: the 1960 (Independence) Constitution; 1963 (Republican) Constitution; 1979 (Second Republican) Constitution; 1989 (Babangida) aborted Constitution<sup>3</sup>; and 1999 Constitution (as amended)<sup>4</sup> all of which seems not to have worked. All these constitutional legal framework mentioned above have not moved the nation forward, hence the clamour for yet another constitutional review all in the quest to arrive at the practice of true federalism. The researchers are of the view that the major problem is not the constitutional framework, but the lack of honest implementation of the letters of the Constitution.

## II. SUPREMACY OF THE CONSTITUTION

The Nigerian Constitution was written to encourage unity as a people of a great nation who must regard themselves first and foremost as citizens, not indigenes. The Constitution is the supreme law of the land, and its provisions bind everyone in

<sup>1</sup> Orchestrated by Sir Frederick Lord Lugard

<sup>2</sup> A. Majekodunmi 'Federalism in Nigeria: The Past, current peril and future hopes' Journal of Policy and Development Studies, Vol. 9, No. 2, February (2015) p. 107-110.

<sup>3</sup> General Ibrahim Badamosi Babangida GCFR, former Nigerian Military Head of State (1985-1993).

<sup>4</sup> This may be referred to as the General Abdulsalami Abubakar Constitution who served as defacto President of Nigeria from 1998-1999; former Chief of Defence Staff under Late General Sani Abacha. He took over from him after his death.

Nigeria<sup>5</sup>. The Constitution expressly states that it is paramount and that its provisions are binding on all authorities and individuals within the Federal Republic.<sup>6</sup> The Apex Court in Nigeria has in so many of its judgments consistently upheld this provision of the Constitution to the effect that by Section 1(1) of the Constitution of the Federal Republic of Nigeria 1999, the Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.<sup>7</sup> Also, by Section 1(3) of the same Constitution, if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.<sup>8</sup>

### III. ATTEMPT BY THE PRESENT CONSTITUTION TO STRENGTHEN UNITY IN NIGERIA

By the provisions of the Constitution, a person becomes a citizen of Nigeria by birth, registration, or naturalization.<sup>9</sup> The aforesaid section implies that a person born in this country, regardless of the location of the country where he was born, the language, creed or religion is a citizen of Nigeria, regardless of where he decides to dwell or make his permanent home.<sup>10</sup>

Citizenship bestows rights and responsibilities on individuals, one of which is enshrined in section 42(1) of the constitution, which states that a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion, or political opinion shall not be subjected to discrimination solely because he is such a person.<sup>11</sup> The preceding section of the Constitution acknowledges that Nigerians are varied in many ways, but it goes on to say that this variety must not be used to discriminate against any Nigerian citizen. All Nigerians have the right to live and work in any region of the country, and they must be treated equally with other citizens regardless of where they choose to live. This objective to

foster National unity under the Constitution will also be seen in section 43 of the Constitution which provides that every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.<sup>12</sup>

Another important provision is Section 15 of the Nigerian Constitution, which states that the Federal Republic of Nigeria's motto is "Unity and Faith, Peace and Progress," and that national integration should be actively encouraged, while discrimination based on sex, religion, status, ethnic or linguistic ties should be prohibited.<sup>13</sup>

The inference is that in the quest of Nigeria's peace, progress, unity, and national integration, issues of sex, religion, status, ethnicity, or linguistic affiliation should not be prioritized. The inevitable question therefore is, is this the situation in Nigeria? The answer is a resounding no. Ethnic, religious, and linguistic feelings are all important in Nigeria. You can be nominated to any post if the person in charge is from the same religious, ethnic, or linguistic group as you, which has increased our variety and made it impossible for citizens to believe they have a stake in the country.

To promote national unity, the Constitution encourages inter-marriage between people of different places of origin, religious, ethnic, or linguistic affiliations, and promotes or encourages the formation of organizations that cut over ethnic, linguistic, religious, or other sectional lines. Nigerians are making strenuous efforts in the areas of marriage and the establishment of cross-border associations. The Academic Staff Union of Universities (ASUU), the Nigerian Bar Association (NBA), and the Nigerian Association of Law Teachers (NALT) are only a few of these professional organizations. The National Youth Service Corps (NYSC) is one important organization that has aided in this area. This is a national organization whose mission is to close gaps in all aspects of our country's life. Graduates from universities and polytechnics are deployed to various parts of the country for a year of service under this program. The participants in this plan are assigned to regions that are distinct from their ethnic origin or where they originally came from.<sup>14</sup>

The goal is for these graduates to integrate into the system, learning the languages and lifestyles of other ethnic groups or residents. This is aimed at promoting national unity and eliminating preconceptions that tend to divide us rather than unite us.<sup>15</sup> Some of them are hired to work in these places, and they also marry others from such areas, deepening our bonds as residents of a country. To foster free movement of labour within the country, corps members are advised to avoid religious prejudice and seek jobs in fields related to their

<sup>5</sup> Section 1(1) Constitution of the Federal Republic of Nigeria as amended.

<sup>6</sup> Section 1(1) Constitution of the Federal Republic of Nigeria 1999 as amended.

<sup>7</sup> See *Abacha v Fawehinmi* (2000) 4 SC. (Pt. 11) 1; *A.G Abia State v A.G Federation* (2002) 6 NWLR (Pt. 763) 204;

<sup>88</sup> See *Senator Nurudeen Ademola Adeleke & Anor v. Adegboyega Isiaka Oyetola & Ors* (2020) 6 N.W.L.R. (Pt. 1721) Pg.440 at Pp. 555-556, paras. G-C.

<sup>9</sup> *Ibid* 25, 26, 27.

<sup>10</sup> However, this noble intention of the Constitution has been corrupted, abused and substituted with the concept of indigene and/or non indigene or settlers for political reason and as a criteria of sharing our National wealth. It has become so bad to the extent that in making any application in Nigeria, you are required to state your ethnic origin. More still, except in places like Lagos State or the Federal Capital Territory, Abuja, Nigeria, it is extreme difficult to aspire for any Political Position outside your State of Origin. It has equally transcended to the right of owning and registration of properties which is near impossible outside one's State of Origin or ethnic background.

<sup>11</sup> Section 42(2) CFRN 1999 (as amended) 2011. An indigene is a person who is a member of a geographically defined group by birth or ancestry, whereas a non-indigene or settler is someone who leaves his or her original place of usual home or occupancy to settle in a new region. These terms are not found in the constitution and can be traced back to our history. They have divided the people and have served as the basis for discrimination in employment, admission to tertiary institutions, and the acquisition of property, all of which are prohibited by the Constitution's sections 16 and 43.

<sup>12</sup> See also section 44 of the 1999 Constitution of the FRN on compulsory acquisition of property. The Supreme Court cases of *La Wari Furniture & Baths Ltd v. FRN* (2019) 9 N.W.L.R. (Pt. 1677) Pg. 262 at Pp. 303-304, paras. D-A; *Elf Petroleum Nigeria Limited v. Daniel C. Umah* (2018) 10 N.W.L.R. (Pt. 1628) Pg. 428 at 443, paras. F-G.

<sup>13</sup> Section 15(1) Constitution.

<sup>14</sup> *Ibid* Section 4 (b) Constitution.

<sup>15</sup> *Ibid* section 2 (a)(b) and Section 3 (f), (g) and (h).

major duties. Employers are encouraged to hire them on a permanent basis.<sup>16</sup>

Because they are on a national assignment and are safeguarded from any negative behavior, these corps members are seen and treated as Federal Government Children.<sup>17</sup> The plot has now shifted. Those on national assignments prefer to serve in their home regions, negating the objective of the NYSC program. This is due to the fact that members of the military have been killed or injured on ethnic and religious grounds. Parents are no longer comfortable releasing their children and wards to serve in locations outside of their communities. Some have argued for the scheme's abolition because it no longer serves the purpose for which it was created.

#### IV. THE NIGERIAN CONSTITUTION AND THE FEDERAL CHARACTER PRINCIPLE

The Federal Character principle reared into the Constitutional provisions for the first time in the 1979 Constitution.<sup>18</sup> It is believed that the propounders of this principle tied it to the need to foster national unity and development.<sup>19</sup> This principle again was retained in the 1999 Constitution and it will be reproduced verbatim for emphasis:

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 States or from a few ethnic or other sectional groups in that Government or in any of its agencies.<sup>20</sup>

The same section provides a similar provision for States.<sup>21</sup> The Constitution refers to the federal character as;

“the distinctive desire of the peoples of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation as expressed in section 14 (3) and (4) of this Constitution”<sup>22</sup>.

The first limb of section 14(3) of the Constitution states that the government's composition, agencies, and operations must reflect the Federal Character. The extent to which the government, which is supposed to safeguard and enforce the Constitution, complies with these sections depends on the

<sup>16</sup> Ibid Section 4 (e), (f) and (g).

<sup>17</sup> Ibid Section 19 Constitution.

<sup>18</sup> Section 14 (3) 1979 Constitution of the Federal Republic of Nigeria; L. Adamolekun, J. Erero and B. Oshionebo, (Publius) Vol. 21, No. 4, Federalism in Nigeria: Toward Federal Democracy (Autumn, 1991), pp. 75-88, Oxford University Press <https://www.jstor.org/stable/3330312> accessed May 21, 2022 at 04:45am.

<sup>19</sup> Ibid Constitution.

<sup>20</sup> Section 14(3) 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011; See also section 7(1) of the third schedule, part I of the Constitution of the Federal Republic of Nigeria 1999 as amended, 2011

<sup>21</sup> Ibid Section 14(4).

<sup>22</sup> See section 318 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

disposition of a particular administration. It is our view that this principle has been the bane of development in Nigeria as it introduced quota system rather than meritocracy. Some region that ordinarily ought to have developed faster than the other has been pegged back by the slow pace of other regions.

The country is replete with myopic implementation of the so-called Federal Character principle which has further fanned the flames of insecurity and discordant tunes. When government Ministries, Departments, and Agencies (MDAs) make lopsided appointments, it certainly violates Section 16(2) of the Constitution, which states that States shall direct their policy toward ensuring that: The economic system is not operated in such a way as to permit the concentration of wealth or means of production and exchange in the hands of a few individuals or a group of individuals.<sup>23</sup>

In our national life, the Federal Character concept was designed to assist us achieve fairness, equity, and justice. However, we believe that the insertion of the federal character principle in the Constitution is as a result of the hype on indigenship and non-indigenship or settlers syndrome as opposed to citizenship. Thus, the Federal character principle is not allowing us to see ourselves as citizens of a single nation willing to put our history behind us and go ahead in making conscious attempts to operate in the comity of nations as a single entity bound in nationhood. Consequently, the problematic interplay of ethnicity, religion, and politics has continued to fuel ethnic militancy and religious movements. Since the 1980s, militancy and religious extremism have been a significant threat to the Republic, and there appears to be no end in sight. It is crucial to stress that religious, ethnic, and cultural variety does not always on their own lead to violence; but given the interest of the political and economic elites merchants who use these factors to fuel animosity, fear, and prejudice for their selfish benefits, it has become difficult to amend the Constitution to achieve a near perfect national unity. It is more worrisome because the provisions of the Constitution mean little or nothing to those responsible for enforcing compliance if it does not suit their religious, ethnic or tribal lining, and that there is a problem worldover when laws are broken at whim without consequence.

#### V. THE FEDERAL CHARACTER COMMISSION

The Federal Character Commission (FCC) was first established in 1996<sup>24</sup> by the military regime of Late General Sani Abacha. It is now established by section 153 of the Constitution<sup>25</sup>. The enabling law is now known as the Federal Character Commission (Establishment, Etc.,) Act<sup>26</sup>. The Commission was meant to superintend the implementation of national unity and integration being the objectives for which the Federal Character principle was formulated. The primary duty of the Commission is to ensure that all Federal Agencies

<sup>23</sup> Ibid Section 16 (2) Constitution.

<sup>24</sup> Decree No. 34 of 1996.

<sup>25</sup> 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

<sup>26</sup> Cap F7 Laws of the Federation of Nigeria 2004.

and Parastatals adhere strictly to the federal character principle. It requires that there is ‘no predominance of persons from a few states or from a few ethnic or other sectional groups’ in the Federal Government and its agencies. Similarly, state governments and local government councils and their agencies must reflect the diversity within their areas of authority.<sup>27</sup>

It is submitted that the composition of Nigeria and the sharp ethnic diversity informed the mandate of the Commission 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 and the need to promote national unity, and also command national loyalty, thereby ensuring that there shall be no predominance of persons from a few states or from a few ethnic or other sectional groups in that Government or in any of its agencies”<sup>28</sup>.

Curiously, from 1996 when the Federal Character Commission was established till date, no executive Chairman of the Commission has been appointed from the Southeast and Southsouth region respectively<sup>29</sup>. In actual fact, there has been ten executive Chairmen/Chairperson’s of the Commission since creation<sup>30</sup>, only one came from the Southwest in acting capacity<sup>31</sup>, whilst other nine have been from the North. The inevitable question thus, is, to what extent would the callous character of the Federal Character Commission be allowed to continue?<sup>32</sup>

## VI. THE JUSTICIABILITY AND UNJUSTICIABILITY OF THE CONSTITUTIONAL PROVISION ON FEDERAL CHARCATER

Section 14 (3) and (4) of the Constitution contained in chapter of the Constitution which provides for the Federal Character Principle under the head ‘fundamental objectives and directive principles of State Policy’ is sadly not justiceable<sup>33</sup>. The chapter consists of sections 13-24 containing the socio-economic rights of citizens. Section 6 (6) (c) of the Constitution<sup>34</sup> on the Judicial Powers of the Courts provides:

“(6) The Judicial Powers vested in accordance with the

<sup>27</sup> <https://www.vanguardngr.com/2021/08/interrogating-leadership-direction-of-federal-character-commission/> accessed 22<sup>nd</sup> May 2022 at 04: 47 am.

<sup>28</sup> Ibid.

<sup>29</sup> <https://dailypost.ng/2021/07/28/revealed-how-buhari-put-two-northerners-in-charge-of-federal-character-commission/> accessed 22<sup>nd</sup> May 2022 at 9:06 Pm.

<sup>30</sup> Alhaji Adamu Fika (Yobe State, Northeast); Alhaji Bello Kofabai (Katsina State, Northwest); Professor Shuaibu Abdul Raheem (Kwara State, Northcentral); Alhaji Muhammadu Ari-Gwaska (North Central); Alhaji Ibrahim Funtua (Katsina, Northwest); Alhaji Muhammad Bello Alkali (Kebbi State, Northwest); Dr Shettima Bukar Abba (Borno, Northeast); Mr Abayomi Sheba (Ondo State, Southwest); Ambassador Shinkafi (Zamfara State, Northwest); Dr Farida Muheeba Dankaka (Kwara State, Northcentral).

<sup>31</sup> Mr Abayomi Sheba from Ondo State.

<sup>32</sup> <https://www.vanguardngr.com/2021/12/the-callous-character-at-the-federal-character-commission/> accessed May 22<sup>nd</sup> 2022 at 9:16 Pm.

<sup>33</sup> See Archbishop Anthony Okogie v Attorney General of Lagos State (1981) 2 NCLR 337 at 350.

<sup>34</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) 2011.

foregoing provisions of this section:

(c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the Constitution”.

By non-justiceability we mean the unenforceability of a right in the court of law. According to Black’s Law Dictionary<sup>35</sup> justiciable means ‘a case or dispute properly brought before a court of justice capable of being disposed of judicially’. Justiciability on the otherhand, is referred to in the same dictionary<sup>36</sup> as being ‘suitable for adjudication by a court’.

We are however consoled that the same provision above stated provides for an exception to the general blanket ban of non-justiceability of this provision or chapter especially where another section in the Constitution makes reference to any section in chapter II of the Constitution which has been upheld by the Supreme Court<sup>37</sup>. The court in interpreting section 15 (5) of the Constitution which provides for political objectives as it relates to abolishing all corrupt practices and abuse of power inconjunction with item 60 (a) of the 2<sup>nd</sup> schedule to the Constitution empowering the National Assembly to enact laws for the purpose of achieving the objectives whereat the Economic and Financial Commissions Act was enacted is enforceable<sup>38</sup>.

Again, section 147 (1) and (2) of the Constitution empowers the President to appoint ministers for the Government of the Federation subject to confirmation by the Senate. Section 147 (3) specifically referred to the provisions of section 14 (3) of the Constitution to the effect that the President in making such appointment must imbibe the Federal Character Principle by appointing at least one minister from each State of the Federation. Section 153 of the Constitution which provides for the establishment of Federal Charcater Commission in support of section 14 contained in Chapter II of the Constitution is now enforceable as it can be used to challenge lopsided appointment in Government. The same is the position as contained in section 197 (2) and (3) of the Constitution<sup>39</sup>.

For how long are we to rely on the whims and caprices of persons to make justiceable provisions of Chapter II of the Constitution? In India the provisions of chapter IV of their Constitution (Articles 36-50) are also not justiceable as specifically contained in Article 37<sup>40</sup> but the activism of members of the judiciary has made virtually the provisions of

<sup>35</sup> Bryan .A Garner, Black’s Law Dictionary, 9th ed. Dallas Texas: West Publishing Co., (2009) 943.

<sup>36</sup> Ibid page 944.

<sup>37</sup> Attorney General of Ondo State v Attorney General of the Federation (2002) 9 NWLR (Pt. 722) 222.

<sup>38</sup> Olafisoye v Federal Republic of Nigeria (2004) 4 NWLR (Pt. 864) 580.

<sup>39</sup> <https://assets.publishing.service.gov.uk/media/57a08bf440f0b64974000ec6/wp43.pdf>

<sup>40</sup> Article 37 Constitution of the People of India

the chapter justiceable<sup>41</sup> to run paripassu with the chapter on fundamental rights as seen in the Indian cases of *State of Kerala v. N. M. Thomas*<sup>42</sup> and *Paschim Banga Khet Mazdoor Samity v. State of West Bengal & Anor*<sup>43</sup>.

## VII. AGENDA FOR THE FUTURE

Having identified the various provisions of the Constitution that tends to unify Nigeria but without success, there is a need to identify various areas of our national life that needs to be thinkered with either by Referendum or National Conference, which would ultimately engender an amendment of the Constitution to enthrone an atmosphere of a more perfect union. The reason for this is that Nigeria professes to be a Federal Republic, which presupposes that our National life and that of the Federating units should be independent but coordinate. Therefore, we shall briefly look at the principles of Federalism, albeit being mindful of the Nigerian peculiar type of federalism owing to how she evolved. We shall also take a look at the issues of resource control, revenue and revenue allocation and internal security being the most thorny issues among others affecting the unity of Nigeria and profer suggestions.

## VIII. REVIEW OF NIGERIAN FEDERALISM

The history of Nigerian federalism dates back to the 1914 Amalgamation. Since then, a lot has transpired. A full examination of history will be impossible due to space and time constraints. In theory, the Constitution promotes Federalism<sup>44</sup>. The Federal Capital Territory and its area councils are established by Section 3 of the Constitution, as there are 36 'independent' states and governments. 774 local governments<sup>45</sup>, excluding those created in protest by some states (Local Council Development Areas (LCDAs) in the previous ten years, which are disputed as they have not been included and recognized by the Constitution and other federating unit. Thus, the LCDAs are not taken into consideration in revenue allocation and planning by the Federal Government. In *Attorney General of Lagos State v Attorney General of the Federation*<sup>46</sup> the Supreme Court held inter alia that the then newly created 57 LCDA's created by Lagos can only be recognized and funded by the federation account if its names and headquarters are submitted to the National Assembly for approval and there names entered in the Constitution.

Suffice here to note that one of the cardinal principles of federalism is the independence of the federating unit. When we say independence, we mean both political and economic independence. The question therefore is, "whether the

Constitution secures the independence of the federating unit?". In our opinion, the answer is no. This lack of independence of the Federating unit has fueled agitations here and there from the unit, and the knotty is of "restructuring" keeps on resonating in every administration, as in the first place, a major criteria for winning a presidential elections in Nigeria is the admittance of any candidate to restructure Nigeria.

As noted earlier, we shall for our purpose emboldened by our observation, study and understanding classify Federalism into two types. The first is "**Federalism by aggregation**", whilst the second is "**Federalism by dispersion**". The character of these two types of Federalism depends predominantly on how a particular federalism evolved. Hence, Federalism by aggregation is a type of federalism where previously independent states yield some of their powers like defence, immigration, customs, currency etc to a federal government for purposes of maintaining stronger ties to be able to play big in the international sphere. A typical example of this type of federalism is the federalism of the United States of America. On the other hand, Federalism by dispersion is the type of federalism where a previously Unitary Government decides to create some states and concede some powers to those states. This is the Nigerian example. In the Constitution<sup>47</sup> the Legislative Powers of the Federal and State Governments are shared into items in exclusive List for the exclusive legislative reserve of the Federal Government; items in the Concurrent List as reserved for both federal and state governments, whilst the items in the Residual List are reserved for the state governments.<sup>48</sup>

Section 4(1) and (2) of the Constitution<sup>49</sup> vests the legislative powers of the Federal Government "in a National Assembly for the Federation, which shall consist of a Senate and a House of Representatives"; and this Assembly "shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List ... and concurrent list . . ." Similarly, Section 4(6) & (7)<sup>50</sup> vests the legislative powers of a State of the Federation in the House of Assembly of that State, which "shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, ..." that is to say any matter in the concurrent list and residual list.

Nonetheless, Nigeria's version of federalism is perplexing, if not downright perplexing. Our federalism is based on the centralization of absolute powers. It is one in which there is a distinct lack of reciprocal respect, giving the impression of a master-servant relationship. In the face of declining internally generated funds, this unequal relationship explains why many of our governors are gadflies, rushing to Federal Capital

<sup>41</sup> <http://hrlibrary.umn.edu/edumat/IHRIP/circle/justiciability.htm> accessed May 24th 2022 at 10:00 pm.

<sup>42</sup> (1976) 2 SCC 310 at Paras. 134, p.367.

<sup>43</sup> (1996) 4 SCC 77.

<sup>44</sup> 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

<sup>45</sup> See Part I of the 1<sup>st</sup> schedule to the Constitution whereat all Local Government Areas are listed.

<sup>46</sup> (2004) 18 NWLR (Pt. 904) 1 SC.

<sup>47</sup> 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

<sup>48</sup> Second Schedule to the 1999 Constitution of the Federal Republic of Nigeria, (as amended) 2011.

<sup>49</sup> Ibid Constitution.

<sup>50</sup> Ibid Constitution.

Territory, Abuja for 'federal grants' on a regular basis. The center - the Federal Government – has grown to be a behemoth, accumulating authority virtually at the same rate that States are losing power.

The reality is that today's Nigeria is a Unitary State parading itself as federal state. Otherwise, why should the national government regulate exclusively, or even concurrently, on topics such as marriages, tourism, policing, taxation, insurance, and electricity, which plainly belong to the states? What is the justification for states relinquishing control of their natural resources? Why should the Federal Inland Revenue Service (FIRS) be the body in charge of collecting VAT from state shopkeepers? Why should the federal government have sole authority over the construction of power plants, transmission, and generation of electricity? Why should the Federal Ministry of Education and the National Universities Commission (NUC) issue orders to State universities or reach out to labour unions to reach collective bargaining agreements?:

Apologists for Nigeria's existing form of federalism frequently make arguments that sound like one or more of the following:

- Just as there are many types of democracy, there are different types of federalism.
- Each country has the right to construct the federal system that best matches its needs.
- Nigeria is yet a young country on the go.
- We will not be able to reach our preferred federal destination in a single day.
- Nigeria will achieve true federalism with time and patience.

These arguments are only half-truths. When we argue like this, we are attempting to apply the 'Nigerian component' to a universal notion. However, there is no such thing as a "Nigerian" brand of federalism, nor is there any such thing as measured or gradual federalism. Every concept has a set of distinguishing characteristics. Nothing compares to patchwork federalism or democracy. There is no other form of federalism like America's, Australia's, India's, or, for that matter, Nigeria's. Either a country is federal or it is not.

It is even more disturbing in the Nigerian example as there are instances where the Federal Government poach and usurp the powers reserved for the States in the residual list. This more often than not leads to strife between the two levels of government. For instance, the item, Value Added Tax (VAT) is neither in the Exclusive nor Concurrent Lists, thus it falls within the residual powers of the State<sup>51</sup> The Rivers State Government joined by other State Governments has taken the Federal Government to Court, in order to stop them from collecting Value Added Tax from its State because it is an item in the residual list. In all, it is our opinion that when a

true federalism is entrenched, it will foster unity among the Federating units.

## IX. RESOURCE CONTROL

Derivation is not a substitute for compensating for environmental harm caused by mineral prospecting and extraction, as many people believe. The concept of derivation is linked to the concept of ownership. It is a type of remuneration for stripping oil-producing states of their ownership of their immovable properties and depriving them of their own source of income. It just requires acknowledging that oil is produced in those states. Derivation is a right to compensation, not a 'benevolent' central government's charity. The States in the Niger Delta region have over the years been clamouring for resource control. What this means is the right to legislate and determine how minerals in their region should be explored and extracted. The present constitutional arrangement is that the right to legislate and of course ownership of mines and minerals, including oil fields, oil mining, geological surveys and natural gas belongs exclusively to the Federal Government.<sup>52</sup> It is our view that this is not what is obtainable in advanced democracies like USA and the likes. Also, this is not in sync with the principles of federalism, which guarantees the right of the federating units to determine their economic and political fortune.

Consequently, it is suggested that the federating units in Nigeria should be allowed to have control over resources in their states or regions. By so doing, states will be forced to look inwards to discover areas of their strength and grow same. This will engender a healthy competition which is a tonic to fast economic growth. Thus it will be that the states are giving the Federal government certain percentage of their resources or proceeds from them and not the other way round. In our opinion, this will enthrone an enduring unity, as no state will feel cheated by the other, which is presently the case in Nigeria.

## X. REVENUE AND REVENUE ALLOCATION

An offshoot of resource control is revenue and revenue allocation. It follows that if the ownership of almost all the resources in Nigeria belong to the Federal Government, the revenues generated from such resources also go to the Federal Government. As a matter of fact, section 162(1) of the Constitution<sup>53</sup> provides as follows:

*“The Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja”*

<sup>51</sup> Items 58 and 59 of the Part I of the 2<sup>nd</sup> Schedule to the Constitution; item 7(a)&(b) of the Part II of the 2<sup>nd</sup> Schedule to the 1999 Constitution.

<sup>52</sup> Items 39 of the Part I of the 2<sup>nd</sup> Schedule to the 1999 Constitution

<sup>53</sup> 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

Also section 162(2) of the Constitution<sup>54</sup>, which deals with revenue allocation formulas, states:

*“The President, upon the receipt of advice from the Revenue Mobilisation 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 generation, 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 per cent of the revenue accruing to the Federation Account directly from any natural resources.”*

The Government of the Federal Republic of Nigeria consist of the Federal, State and Local Governments respectively. By virtue of the Federal system of governance employed in Nigeria all revenues generated by various components are transmitted to the Federation account from which the Federal Government disburses monthly allocation to the federating components in accordance with the measures contained in section 162 of the 1999 CFRN which emphasizes the adoption of the minimum of thirteen per cent revenue derivation formula from proceeds of natural resources. The agitations and complaints of inequality emanating from virtually all the oil producing States in Nigeria are that the thirteen per cent derivation formula unilaterally imposed on the Niger Delta States<sup>55</sup> (oil producing States) is an injustice in view of the dangers the inhabitants of the States are exposed to as a result of oil exploration activities compared to what obtains in other States where there is no oil exploration.<sup>56</sup> Denying an oil producing State the full benefit of the proceeds of its revenue in the guise of thirteen per cent derivative formula, and in the other hand neglecting the region and her people in terms of infrastructural development, Federal Government presence in the region, and lopsided political equations/appointments in comparison with other regions that brings little or nothing to the Federation account irresistibly points to deceit. The ostensibly thirteen per cent derivation mentioned above is a ruse. It is one of the Constitution's enshrined inequalities. That ludicrous percentage was imposed by military decree without any dialogue with interested parties, that is, no constitutional conference.<sup>57</sup> It wasn't always like this. The 1963 Constitution's Section 140(1) stated as follows:

*“There shall be paid by the Federation to each Region a sum*

*equal to fifty per cent of –*

- (a) the proceeds of any royalty received by the Federation in respect of any minerals extracted from that Region; and*
- (b) any mining rents derived by the Federation from within that Region.”<sup>58</sup>*

In accordance with federalist ideals, we believe that States should exercise control over all natural and non-natural resources in their jurisdiction for the benefit of their people. They should pay taxes and other royalties to the Federation, as federations in North America and elsewhere do. With this the present perceived inequality and scramble to control the power and the resources at the centre will reduce, thus enthroning unity among the federating units.

## XI. INTERNAL SECURITY

This is equally another breeding ground for disunity because of over centralization of Nigerian security architecture. The Constitution provides that “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”<sup>59</sup> The Police Force is the leading security outfit as it relates to the internal security. It is therefore preposterous that the governor of a state who should ordinarily be the chief security officer of the state does not have absolute powers to give orders to the Commissioner of Police incharge of the state. Section 214(4) of the Constitution<sup>60</sup> provides thus:

*“Subject to the provisions of this section, the Governor of a State or such Commissioner of the Government of the State as he may be authorized in that behalf, may give to the Commissioner of Police of that State such lawful direction with respect to the maintenance and securing of public safety and public within the state as he may consider necessary, and the Commissioner of police shall comply with these directions or cause them to be complied with;*

*Provided that before carrying out any 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 authorized in that behalf by the President for his direction”.*

It is evident that this lack of internal security apparatus under the direct control of the States has made policing in Nigeria inefficient and has engendered the malaise synthomatic in setting up various regional security outfits like “Amotekun” in the Western Nigeria, “Hisbola” in the Northern Nigeria and “Ebube Agu” in the Eastern Nigeria. It has equally for the same reason that the heightened agitations, banditry, and

<sup>54</sup> Ibid Constitution.

<sup>55</sup> The Niger Delta States are Abia State, Akwa Ibom State, Bayelsa State, Cross Rivers State, Delta State, Edo State, Imo State, Rivers State, and Ondo State.

<sup>56</sup> [https://www.researchgate.net/publication/247897086\\_Negative\\_impacts\\_of\\_oil\\_exploration\\_on\\_biodiversity\\_management\\_in\\_the\\_Niger\\_Delta\\_Area\\_of\\_Nigeria](https://www.researchgate.net/publication/247897086_Negative_impacts_of_oil_exploration_on_biodiversity_management_in_the_Niger_Delta_Area_of_Nigeria), accessed 26th July 2022 at 10:06pm.

<sup>57</sup> The General Abdulsalami Abubakar Military Administration hurriedly in 1999 packaged together a book referred to as the 1999 Constitution and handed it over to the incoming civilian administration.

<sup>58</sup> Underlining ours for emphasis.

<sup>59</sup> Section 214 (1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 2011.

<sup>60</sup> Ibid 1999 Constitution.

clear criminality that are threatening the Unity of Nigeria has become very difficult to contain. It is our opinion that if the policing system in Nigeria is changed, peace, security and above all unity will to a large extent be restored.

## XII. CONCLUSION/RECOMMENDATIONS

There cannot be a perfect union in the absence of equity, justice and equality. These attributes are clearly lacking in the nation Nigeria and as such the need for deliberate sincere Constitutional amendment and unsentimental implementation of the provisions of the constitution has become imperative as a wayforward if Nigeria is to take its place in the comity of nations. The researchers observe that there is so much nepotism, insincerity and naked lies exhibited by persons charged with the implementation of the provisions of the constitution.

Irrespective of the Constitutional provisions, the injustice been felt by regions that are not supposedly in authority even though they contribute bulk of the economic revenue to the Federation account are enormous and this is the reason why when leadership opportunity becomes available, it is considered as an opportunity to cut and share from the national cake for the people of that region rather than an opportunity to serve. Citizens, in presently turn a blind eye to a glaring evil perpetrated by their kinsman and even justify same by making allusion to a supposed evil done by another person from another region who was not punish. It is now a case of 'leave our criminal for us, we are satisfied by his/her infamous accomplishments'.

There is no love and unity amongst Nigerians but rather discrimination and even racism in a nation where peace, unity are supposed to be the watch word. By the mere mention of your name without more, your identity and geneology is reveled including your religion and ethnicity despite the provisions of section 42 Chapter IV of the Constitution that prohibits discrimination. Religion and ethnicity are now an albatross to the Nigerian people which has become an instrument in the hands of desperate politicians which they use to divide the people. The rule of law has been abandoned, hence the rise in jungle justice and disobedience to Court Orders.

The researchers recommends that the rule of law be embraced together with fairness in the implementation of the provisions of the Constitution though the constitution is not perfect. Furthermore, concerted efforts should be made to build Institutions rather than building strong individuals as is the case in Nigeria where such powerful individuals undermine Government Institutions by their actions and or inactions at will without attendant consequences.

The researchers call for a mental re-orientation and national re-birth to forge a greater sense of unity among the diverse ethnic groups that make up the Nigerian nation. This mental renovation will reset the mindset of Nigerians to imbibe the attribute of nation building in the observance and implementation of the provisions of the 1999 CFRN (as amended).