INTERROGATING THORNY CONSTITUTIONAL ISSUES AND GAPS IN THE ARCHITECTURE OF NIGERIAN FEDERAL STRUCTURE: WHICH WAY FORWARD?

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ABSTRACT

Central to the practice of federalism is the mode of power sharing constitutionally provided for between the central government and the federating units. Nigeria adopted the federal system of government since 1954. However, the nation has not enjoyed a sustained period of social cohesion and tranquility in the polity. The thrust of this research therefore is to examine closely the salient provisions of the Nigerian constitution that spells out how the powers of state are shared between the federal government and the various states in certain key aspects of governance. This research finds that over time with amendments to the constitution, the federal government arrogated more and more powers to itself in sectors that ordinarily ought to be shared between both tiers of government. This has placed a huge financial burden on the federal government. All this was made possible by military fiats and has made certain aspects of the constitution unworkable and impracticable due to the cumbersome procedure required for the amendment of the relevant provisions of the constitution during civil rule. Amendment of these sections is almost impossible. These and several other factors now account for why the country is almost at the brink of disintegration. The authors therefore posit that there is need for the convoking of a sovereign national conference where all these issues will be addressed and the federal government divested of the powers it has wrongly arrogated to itself for the practice of federalism to be meaningful for the country.

Keywords: Federalism, State, Constitution, Powers, Government, Amendment**.**

INTRODUCTION

The 1999 constitution from the very first section proclaims Nigeria as a Federal Republic and goes ahead to state that Nigeria shall be a federation consisting of states and a capital territory. A federal system of government is a functional and pragmatic approach adopted to foster social cohesion in a pluralistic society (Babalola, 2019). The story behind the coming together of every federal state is unique to it as there is no universal coherence or uniform global practice. These range from wars and revolutions, dynastic marriages, colonial empires, international treaties and other peaceful democratic processes. A federation could emerge from the coming together of previously independent entities or a country with a highly centralized structure may decide to adopt the federal system of government for the purpose of devolution of

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powers. In a sense, the Nigerian federation evolved through both processes but in the former, the coming together due to the dictates of the colonialists, was not as a federation but as a state with a highly centralized authoritarian structure of governance. Nigeria's federalism evolved by devolutionary federalism, the process of devolution of powers from a formerly highly centralised system of government and the eventual adoption of federalism was however piecemeal and hesitant at the onset.

Probably as a result of the history behind the process of the adoption of a federal system of government in Nigeria, from 1960 when the colonialists departed until the present, the country has not enjoyed a long and sustained period of respite. Less than a decade after independence, the nation was engulfed in a bloody civil war for over thirty months that left over a million dead and many more displaced. Just a few decades down the line, parts of the county are torn apart by armed conflict caused by the activities of the Boko Haram sect which may have claimed more lives than that of the Nigerian civil war. Ethnic rivalries and secessionist groups are clamouring for break away from the federation. These calls have not abated and the nation is in a continuing struggle to contain the activities of the secessionists. All these conflicts foreground the ranking of Nigeria as the "*least cohesive country*" in the social cohesion index (SCI) and the social cohesion index variance adjusted (Langer et al., 2017).

The traditional problems that federations usually contend with range from the satisfactory division of powers between the central government and the federating units, the protection of the smaller units against dominance by the larger, organization of relations between the centre and the units and between the units *inter se* as well as a satisfactory method of amendment of the constitution. Nigeria today currently grapples with all these issues and more; the impact of military autocracy and centralization of powers in the federal government, the clamour for fiscal federalism, and the creation of more states for some regions of the country (Ita et al., 2019). These and several other more complicated and hydra headed problems now beset the Nigerian state. It is therefore imperative that there should be a continuing discourse on how to chart a new path for the federation and proffer long term solution to these concerns.

Central to most of these issues is the need to revisit the terms, by which the federal arrangement was adopted; why does it appear to be a colossal failure? This paper therefore sets out to examine the concept of federalism as provided for under the Nigerian constitution, as well as its evolution, development and practice in Nigeria. The paper identifies some critical constitutional challenges that are confronting the Nigerian state which is traceable to the model of federalism that is practiced in Nigeria. The issues discussed are by no means exhaustive, only what is considered very crucial by the writers at this stage of the nation's development. The final part of the work considers viable propositions that will help stem the tide of disintegration and turn around the fortunes of the country if implemented and help chart a course for the attainment of national rebirth

Conceptual Analysis

A federal state is one in which there is a central authority that represents the whole and acts on behalf of the whole in external affairs and in such internal affairs as are held to be of common interest and in which there are also provincial or state authorities with powers of legislation and administration within the sphere allotted to them by the constitution. Federalism

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involves the legal relationship and distribution of powers between the national and regional governments within a federal system of government (Garner, 1999). The term federalism originated from a Latin expression "*foedus*" which refers to a covenant; it implies a political arrangement in which members are bound by the terms of which covenant can be said to be the constitution. Federalism as a concept is traceable to the ancient twelve tribes of Israel and the league of Greek City States (Chukwujekwu, 1994; Ibiam, 2016). The core of federalism lies in the constitutional division of powers between the central government and the component units (Anderson, 2009).

The powers of the component units in a federal state flow directly from the constitution and are not in any way determined by the federal government. Both the federal government and the component units exercise coordinate powers and the units are not subservient to the centre (Nwabueze, 1983). Countries with varying historical, economic and political antecedents and demographics have been known to operate the federal system of government; poor states as well as rich ones, small ones as well as big ones, some with relatively homogenous populations as well as others with diversity in ethnicity, religion and other social and economic indices. Furthermore, there is no upper limit to the number of units that that make up a federation. Some have as few as two component units while others have as much as eighty. Historically, the first state to adopt federalism is the United States during its constitutional convention in 1787. Other states which operate the federal system of government include Argentina, Australia, Belgium, Bosnia and Herzegovina, Brazil, Canada, Germany, India, Malaysia, Mexico, Pakistan, Russia and Switzerland among others.

A number of factors combine to enable the adoption and continuance of federalism as a system of government for any people. First, there must be a strong desire for the union, (or in the case of formerly unitary states, for the devolution of powers); usually, as a result of the realization that the interests of each of the units will be better protected when a number of small states with geographical contiguity come together to protect their independence from encroachment by more powerful states. Where this need for the union is lacking, there will be the feeling by the component units that they have been short-changed by the federal arrangement and there will be a constant crisis on the need to dissolve it or break free. Along this same line of thought, it needs be stated that the sentiment of union is induced by community of blood, language and culture, and the similarity of political institutions (Appadorai, 2000). A second consideration in the formation of federal state is the desire for some form of autonomy; the component units must desire their independence in all but essentially matters of common interests. Other factors that serve to advance the need for the adoption of federal system of government include geographical contiguity, the absence of marked inequalities among the component units as well as political education and the willingness of the people to be subject to the rule of law.

In this work, the term "*architecture*" is simply used to denote the structure and design of a system or product. Therefore, by the "*architecture of Nigerian federalism*", it is meant the system or brand of federalism adopted by the Nigerian state. The thorny constitutional issues are the vexatious, problematic, controversial, tricky and knotty issues and challenges emanating from the constitution that plague our model of federalism as a people. By gaps, it is implied a breach or defect. This topic therefore seeks to identify the vexatious constitutional issues,

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breaches as well as defects inherent in our model of federalism that has made it apparently unworkable and mapping out a roadmap for rediscovery and national rebirth.

Evolution, Adoption and Development of Federalism in Nigeria

The origins of federalism in Nigeria date back to the activities of British colonialists who by sheer force of military might, launched military campaigns against empires in the hinterland, of territories now known as Nigeria. This was carried out in areas where there was form of resistance to British trading interests such as in Benin and Yoruba empires. Communities that did not voluntarily yield to colonial administration were mercilessly crushed by war and their leaders deposed, killed or exiled. Upon being conquered, these hitherto independent empires were brought under colonial rule as protectorates under treaties of protection. Nigeria is thus a creation of colonial *diktat*. The journey towards federalism therefore started with the merger of independent territories for the purpose of administrative convenience of the colonialists. In 1906, the colony of Lagos was joined with the protectorate of Southern Nigeria under a single administration with Sir R.D.M. Moor as its High Commissioner. At this time, both the northern and southern protectorates were administered as separate political entities, but were however further divided into groups of provinces. This shows that from the beginning, there was never any conscious administrative policy to establish British rule over the whole territory as acquisition was piecemeal, hesitant and plan less.

This background is necessary for a proper understanding of how the Nigerian state emerged, as the amalgamation of both regions marked the beginning of our journey together as a people; the struggle with governance by the colonialists and the eventual adoption of federalism in 1954 under the Lyttleton Constitution of 1954. It is pertinent to point out here that in bringing together the Northern and Southern Protectorates, the interest and desire of the indigenous peoples was never a factored into the equation. The prime and sole consideration was the need for an easier administration of the Northern Region by deploying the resources of one region to fund the other. The sentiments of the people of both regions were never sought or made a relevant factor; whether or not both sides desired to live together as a single political entity was also never taken into account.

Between 1914 when both protectorates were joined in a forced union and 1954 under the Lyttleton constitution when Nigeria officially adopted the federal system of government, Nigeria experimented with three other constitutions. The Clifford's constitution of 1922, the Richard's constitution of 1946 and the Macpherson's constitution of 1951. However, even though it was under the Lyttleton's constitution that Nigeria was first named a federal state, the advancement towards federalism was gradual as powers were gradually decentralised by the creation of regions which were increasingly made autonomous over time and which process only culminated as it were in 1954. The Nigerian Federation has always had peculiar features; the most evident being that it was not created by the coming together of separate states but was the result of the subdivision of a country which had in theory been ruled as a single unit (Mackintosh, 1962). The British policy of divide-and-rule system introduced in Nigeria operated to entrench disunity, mutual suspicion, and recriminations among the diverse ethnic nationalities that were flagrantly forced into what has been described as *"a mere geographical expression*". It is common knowledge that the British colonial government through its system of divide and rule

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orchestrated by her indirect rule policy promoted and encouraged ethnic loyalty and consciousness. Regionalism as introduced by the colonial government heightened tribal sentiment, exacerbated minorities exploitation and domination and nurtured mutual suspicion and unhealthy battle and fight over federal power on ethnic and tribal and religious basis.

The 1954 Lyttleton Constitution (Udoma, 1994), constitutionalised regionalism by establishing for Nigeria a three-region federation. This capricious creation was in total disregard of the multi ethnic nature of the country. The three regional structures further institutionalised the political hegemony and demographic pre-eminence of the North over the two southern regions combined with total disregard of the minorities situated in this region. Amidst serious and furious protest of these minorities, the British colonial government adamantly resisted all calls for a further subdivision of the country so as to cater for the minority ethnic groups. This is in spite of the loud warning that a federal system in which one region had a population majority could be a potential cause of instability. The Lyttleton constitution of 1954 made Nigeria a federation consisting of five parts, comprising of the Northern Region, Western Region, Eastern Region, the Southern Cameroons and the federal territory of Lagos as capital. Each of the regions had a Governor as the executive head while the title of Governor General was conferred upon the executive head of the whole federation. Earlier under the 1951 constitution, a House of Representatives had been established consisting of one hundred and thirty six elected members. Of this number, thirty four were from the Eastern Region, another thirty four was from the western region and sixty eight from the North. There were also twelve other members of which six were officials and six others nominated by the Governor (this was the title of the head of the executive arm of government at the centre under the 1951 constitution).

Federalism in Nigeria has been antithetical to growth and development because of what has been termed "*unitary federalism*" where almost all powers are concentrated at the centre. Several factors account for the way the Nigerian federation has turned out (Nyekwere & Duson, 2020). The first of these can be traced to our colonial antecedents and the forceful merger of previously independent ethnic nationalities into protectorates and the subsequent amalgamation of the north and the south. As already pointed out, all these were carried out with scant regard for the long term consequences of these forced arrangements. These eventually led to a situation where it became imperative to search for a system of government that may be suitable for a country with such divergent demographics, and then with the absence of geographical contiguity in some instances, all factors that normally serve as necessary preconditions to the adoption of the federal system of government. Also, there was marked inequalities among the component units naturally as well as inequalities that were artificially created by the colonialists. Other factors that serve to undermine the Nigerian political state have been identified to include "*effects of dominance of oil; profound lines of societal segmentation; distorted federal system of government*…." Therefore, the manner in which the country evolved and eventually adopted federalism as the system of government left so much to be desired and anyone with foresight would have known that it was only a matter of time before all these barely sheathed danger signals would start haunting the federation. It is apposite to point out here that there are federations which were midwifed in situations similar or even more precarious than ours have made a success of their decision. It is therefore incumbent on us to locate the factors that have deterred us from achieving similar results.

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Thorny Issues and Gaps in Nigerian Federalism

This segment of this paper seeks to identify a number of problematic, knotty and delicate issues that have consistently defied solution and serve to set the country back in her choice and practice of federalism. These issues are varied and hydra headed, they are identified and discussed in no particular order; also, the issues identified are by no means exhaustive. The segment goes further to explain the rationale for labelling these issues as being problematic and to suggest ways by which these challenges can be surmounted.

Bloated Exclusive Legislative List

In an ideal federal arrangement, the central government is expected to take on only those responsibilities that are best centrally administered and which are of common interest and concerns the nation as a whole. All other matters which are not primarily of common interest should remain in the hands of the component units. Matters that should be of common concern include foreign affairs, defence, control of the armed forces, currency, treaty ratification and a few others. In addition to matters that are meant exclusively for the central government, in almost all federations, Nigeria inclusive, there are some shared or concurrent powers in which both orders of government can make laws. In the event of conflict between federal laws and state laws in matters under the concurrent list, the federal law prevails.

A study of the Nigeria's constitutional history reveals a gradual burgeoning of the exclusive legislative list from the independence constitution of 1960 to the extant 1999 constitution. Several matters that were originally part of the current legislative list have stealthily found their way into the exclusive list thereby expanding the legislative jurisdiction and powers of the federal government while denying the state governments of powers over these matters. Under the 1960 independence constitution for example, the exclusive legislative list comprised of forty four matters while that of the 1963 Republican constitution was made up of forty five matters. Under both constitutions, matters such as arms and ammunitions, census, industrial development, labour, legal and medical profession and other professional occupations, prisons and other institutions for the treatment of offenders were all under the concurrent legislative list. Very critically also, police powers were not also a matter under the exclusive legislative list under both the 1960 and 1963 constitutions. By 1979 when Nigeria was coming out of the military interregnum that had lasted from 1966 until 1979, the exclusive legislative list had swollen to sixty six items and sixty eight items under the extant 1999 constitution. Most of the matters that were under the concurrent list in the earlier constitutions such as arms and ammunitions, census, industrial development, labour, legal and medical profession and other professional occupations, prisons and other institutions for the treatment of offenders were brought under the exclusive list including police powers.

It is important to note that the increase in the powers of the federal government served to emasculate the states of powers in vital sectors that are best concurrently administered. This no doubt had dire consequences for the administration and management of the federating units. In a very crucial sector that pertains to the security of the state for example, when the powers over arms and ammunitions were taken from the concurrent list and placed under the exclusive legislative list, it implies that the constituent units of the federation has to now depend solely on

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the federal government in supplies relating to arms. This no doubt will severely impede the ability of the state government to guarantee the security of the lives and properties of her indigenes and residents. Also, it is curious that the power to conduct census was removed from the concurrent list to the exclusive list under the 1979 and 1999 constitutions. This is because all states in the federation will have to depend on figures supplied by the relevant agency of the federal government to plan for the development of their states.

An Over Centralised Police Force

This is a corollary of the issue of an over bloated exclusive legislative list. Nigeria is today faced with very grave security challenges that threaten the continued existence of the federation itself. These range from the menace of herdsmen that perpetrate all forms of heinous crimes from wanton destruction of lives of innocent peasant farmers to burning of entire villages and settlements, to kidnapping, rape and murders; the list goes on and on. There is also the problem of general breakdown of law and order with cases of kidnappings now reported on a daily basis in several parts of the country. The activities of non-state armed groups threatening secession from the north eastern part of the country as well as from the south east has also led to the loss of thousands of lives of innocent Nigerians. All these points to the fact that the security situation of the country has overwhelmed the Nigeria Police Force which is the major agency charged with the onerous duty of protecting the lives and properties of citizens.

Another point that needs to be emphasized is the fact that without a Police Force that is fully under the control of the state governors, state governors can hardly be said to be the chief executive officers of their state. Under the present constitutional arrangement, the governor of a state may give lawful directions to the Commissioner of Police of a state which shall be complied with. However, the commissioner may first request that the matter be referred to the president or such other minister of the federal government before carrying out such direction. In cases where there is need to act expeditiously, this arrangement can occasion avoidable delays and bottlenecks that may defeat the aim of detection and prevention of crimes. This situation is therefore an anomaly and a gap that calls for immediate remediation the removal of police matters, arms and ammunitions among others from the exclusive legislative list and a provision allowing the creation of state police in the constitution. This also will not be completely novel for Nigeria as that was the arrangement prior to the 1979 constitution.

The Inherent Inequity and Unworkability of the Provisions of Section 8 of the Constitution and Related Issues

Section 8 of the 1999 Constitution makes elaborate provision for the creation of new states, the adjustment of the boundaries of existing states, the creation of new local government areas as well as the adjustment of the boundaries of existing ones. A federation exists due to the existence of federating units as well as the constitutional powers exercisable by both strata of government. The number of these federating units must not be cast in stone, as there must be workable constitutional provision for the adjustments of the federating units as the exigency of the times demands. It is interesting to note that for over two decades that the 1999 constitution has been in operation, no new state or local government area has been successfully created vide

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the provisions of this section. Indeed, except in 1963 when the Midwest Region was created by a civilian government, all state creation exercise has been carried on by the military. There have been calls for the creation of states and local government severally (Alapiki, 2005); however, due to the political undercurrents that affect every decision in the country, coupled with the way the section is framed, the day may never come when the section will become consummated. As a matter of fact, it has been canvassed that the clamour for the creation of more states simply amounts to a scramble for the national cake. The clamour is motivated above all other factors by the centralised revenue allocation system and the automatic allocation of substantial revenues to states with a formula that has more to do with equality of states and population rather than revenue raising abilities (Okpanachi & Garba, 2010). Regarding the creation of state, in addition to the other requirements, there is the provision that such a proposal must in the final analysis be approved by a referendum supported by a simple majority of members of All the States of the federation and a simple majority of members of the Houses of Assembly. Also, there must be a resolution passed by two-thirds majority of members of each House of the National Assembly. What could be the possible rationale for providing that a state in the far flung North West for example and the members of the House of Assembly having a say in determining whether the peoples in a state in the south east have decided to break up into two different states for the purpose of advancing development in their region? The answer to this puzzle is also directly tied to the way and manner in which natural resource revenue is administered in the country.

The provisions of section 8 as it currently stands are unworkable and impracticable. Twenty two years after the constitution was birthed, it has never been put to use in spite of the glaring need for the creation of more states, and especially local government areas. This position of things impedes development as well as freedom of association which is a guaranteed constitutional right. These may also be responsible for the secessionist movements in certain parts of the country. The African Charter on Human and Peoples Rights, which is a treaty that has been domesticated by Nigeria and which now form part of the corpus of our laws recognizes the right to development and self-determination as a fundamental right. It is submitted that even if the right to self-determination is not stretched to include the right to secede from the federation, it should at least accommodate the right to be recognized as a new state within the federal entity. Constitutional provisions that impede the right to break away and form a new state within the federation should be expunged. Furthermore, the paramount criteria that should be used in determining whether or not a new state can be created from existing states should be economic viability and self-sustainability. It may also be necessary to make provision for merger of existing states, especially states that are currently not self-sustaining but wholly dependent on the federal government for monthly dole outs from resources coming from other states.

Fiscal Federalism and the Ownership of Mineral Resources in Nigeria

Fiscal federalism connotes the ability of each tier of government in a federal state to be able to meet up with the financial demands of governance and administration without undue dependence on the other tier (Ewetan, 2012). It is a critical component of federalism as it goes to determine whether a tier of government is coordinate with or subordinate to the other as well as the political and economic stability of the state. According to where: If state authorities, for example, find that the services allotted them are too expensive for them to perform, and if they

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call upon the federal authority for grants and subsidies to assist them, they are no longer coordinate with the federal government but subordinate to it. Financial subordination makes an end of federalism in fact, no matter how carefully the legal forms may be preserved. It follows therefore that both state and federal authorities in a federation must be given the power in the constitution each to have access to and to control, its own sufficient financial resources. Each must have a power to tax and to borrow for the financing of its own services by itself.

Fiscal federalism "*defines the core rules for resource allocation, distribution of responsibilities for service delivery, and mechanisms for interaction between different tiers of government*" (Freinkman, 2007). An essential aspect of fiscal federalism is how to ensure that the sharing of revenue between federal and state governments corresponds with the distribution of constitutional functions. Some federations establish an independent body or commission to operate their fiscal system. In Nigeria, an independent fiscal body, the Revenue Mobilisation, Allocation and Fiscal Commission (RMAFC), established in 1989, reviews the revenue-sharing formula and also advises the presidency on the sharing of national revenues. Section 162(2) of the 1999 Constitution also empowers the president of Nigeria to table a revenue formula before the National Assembly regularly upon receipt of advice from the RMAFC. Unlike the previous fiscal commissions, the RMAFC is a permanent body. It is also independent, at least in theory.

The activities of multinational oil companies during exploration for oil as well as extracting same have severe consequences for the environment. In Nigeria, it is the Niger delta region that has suffered untold devastation and degradation as a result of the activities of these activities. It is therefore imperative that the issue of fiscal federalism be revisited to allow states control the resources in their states and pay royalties and taxes to the federal government as this will allow for better care of the environment.

It is instructive to also point out that section 162 stands in conflict with section 1 of the Land Use Act of 1978 which vests all lands in a state on the governor of that state:

Subject to the provisions of this Act, all land comprised in the territory of each State in the Federation are hereby vested in the Governor of that State and such land shall be held in trust and administered for the use and common benefit of all Nigerians in accordance with the provisions of this Act.

The Land Use Act is deemed to be a part and parcel of the 1999 constitution by virtue of the provision of section 315 of the Constitution which incorporates the Land Use Act (and three other legislations) as part of the constitution by providing that the provisions of those enactments shall: continue to apply and have full effect in accordance with their tenor and to the like extent as any other provisions forming part of this constitution and shall not be altered or repealed except in accordance with the provisions of section 9 (2) of the constitution.

It would therefore appear that section 162 of the constitution is in conflict with section 1 of the Land Use Act by virtue of the fact that whereas the Land Use Act vests ownership of all the lands in a state on the governor of the state, the constitution vests the minerals within the land on the federal government. Whether by means of strong arm tactics or otherwise, the latter position is what is being upheld in the country today. Over ninety percent of the revenue of the federation is derived from crude oil which is the major mineral resource in the country and this is derived predominantly from the Niger-delta region of the country. Section 162 of the 1999 Constitution allows for a minimum of thirteen percent of the said revenue to be paid on the principle of derivation.

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Another pertinent issue that needs to be urgently addressed with regards to fiscal federalism and the distribution of revenue of the federation is the proportion that goes to each of the three tiers of government in the federation, the Federal, the States and the Local Government Councils. Usually, the federal government receives the bulk of revenue due to the volume of responsibility it has arrogated to itself. It has already been canvassed earlier in this paper that the exclusive legislative list is over bloated. This leads to a situation where the Federal Government will require funds for projects that should ordinarily be carried out solely by the States or jointly by the States and Federal government such as the issue of the Police Force discussed above.

The Debacle of the Federal Character Principle

The federal character principle is enshrined in section 14(3) of the 1999 constitution. By this provision, 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. In furtherance of this principle thus enunciated, a Federal Character Commission is established with elaborate provisions for its composition and powers. Among others, the commission is charged with the duty of working out an equitable formula for the distribution of all cadres of posts in the public service of the federation as well as other government agencies. The commission is to further promote, monitor and enforce compliance with the principles of proportional sharing of all bureaucratic, economic, media and political posts at all levels of government. It is also empowered to take such legal measures, including the prosecution of the head or staff of any ministry or government body or agency which fails to comply with any federal character principle or formula prescribed or adopted by the Commission. Also, in furtherance of this principle, the president in the appointment of ministers of the government of the Federation shall appoint at least one minister from each state who shall be an indigene of such state. The same principle is also to be applied by the president when carrying out other presidential appointments.

The federal character principle first featured in the Nigerian constitution under the 1979 constitution and was repeated verbatim under the 1999 constitution. The provisions form part of the non-justiciable provisions of chapter two of the constitution for which an action cannot be brought for the enforcement of the provisions except same has been made a part of a law enacted by the legislature. In such an instance, the action will be founded on the provisions of the resultant enactment and not on the provisions of section 14(3). It is also doubtful whether an action can be instituted to compel the president to appoint a minister from any state if he fails to do so pursuant to section 171(5). Also, the current practice whereby some ministers are designated as "*ministers of state*" while others are simply "*ministers*", with the former appearing to be junior ministers, one is left wondering which criteria is used to determine the states that should enjoy the privilege of ministers as against ministers of state. The federal character principle was presumably inserted into the constitution to correct the imbalance in the sharing of political powers and opportunities for employment in federal agencies and institutions. The principle is also expected to be applied in siting of federal projects and admission into

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educational institutions. This principle has led to the awkward situation where merit has been sacrificed on the altar of federal character repeatedly. Whereas the principle has been described in some quarters as the "*cornerstone of ethnic justice and fair government*," others from the South condemned it as "*geographical apartheid*," with many southern civil servants viewing the policy as "*a tool for depriving them of their jobs*" (Mustapha, 2007).

The Unsatisfactory Procedure for Amendment of the Constitution

The procedure for the amendment of the constitution is spelt out under section 9. The provision of this section as it is currently raises a lot of worrisome issues. Perhaps the first of such issues is the fact that the procedure gives room to only the National Assembly to initiate the procedure for the amendment of the Constitution. Using the United States as an example, the move for the amendment of the constitution can be initiated either by Congress or by a State. This is important due to the fact that at the stage of our development as a people, it has become apparent that when legislators of the National Assembly are elected into office, other political considerations becloud their sense of judgment and rationality. Thus, in situations where there is need to call for amendment of the constitution to address any issue that may be of interest to citizens or people of their constituency, if raising such an issue will work against their political ambition, their ambition takes precedence. This point is also necessary because, by the provision of the same constitution, sovereignty is vested in the people of Nigeria, from whom government derives all its authority. The fact that the people have elected representatives should not be interpreted to mean that they have ceded their sovereignty to the members of the National Assembly in such a way that, if they fail, refuse or neglect to act in a matter that is of grave concern to any part of the nation, the citizens will be at their mercy. There must be a separate constitutional means of compelling the initiation of procedure for alteration of the constitution in addition to the method already outlined. Anything short of that as is the current position, is a gap that needs to be addressed and remedied.

A further issue that also centres round the amendment provision is that of the piecemeal amendment of a section or few sections of the constitution. There is no provision for an overhaul of the entire constitutional structure by way of the convoking of a sovereign national conference for a comprehensive review of the entire constitution. This accounts for why the National Assembly had to go round the entire length and breadth of the country calling for memoranda and proposals for the amendment of the constitution since there was no provision which allows citizens to send representatives of various segments of the nation to the Federal Capital Territory for a comprehensive engagement on the need to overhaul the constitution.

Charting a Way Forward for the Nigerian Federation

The issues canvassed above are symptomatic of the fact that the federal structure of government in Nigeria as encapsulated under the extant 1999 Constitution is in urgent and dire need of an overhaul. The first question now turns on the fact that by the provision of the constitution, there is no section that makes provision of the kind of comprehensive overhaul that will address the shortcomings of the constitution. The provision for alteration leaves no room for the convoking of a sovereign constitutional conference for which citizens from all the states in

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the federation can participate to comprehensively engage with one another on the way forward. The National Assembly is currently in the process of overhauling the constitution and in the process has gone round the entire federation receiving memorandum from different groups on issues that should be addressed. The process is still on-going. However, there appears to be no constitutional backing for their action. The only explanation has to be that they have themselves realized that there is a gap in the constitution which does not allow for the direct participation of citizens (except by their elected representative) in the process of amending the constitution. The only way around this gap is for the members of the National Assembly to work within the parameters of the present provision of alteration to achieve whatever they intend to do. Subsequently, as part of the provisions that would be overhauled, that of section 9 should be considered. It should be amended to allow for states to have the capacity to initiate the procedure for amendment of the constitution. There should also be provision for referendum in the case of such overhauling to vet the sections that should be amended.

Regarding the issue of state creation, it is apparent that with the present constitutional provision, no new state may ever be successfully created. This is as a result of the undercurrents of revenue sharing as well as other political considerations. The requirement of a referendum to be approved by a simple majority of all the states of the federation is tenuous and unrealistic. No state will be willing to vote in support of the creation of another state when it knows that this will result to a shortfall of the revenue coming to it at the end of the month. This is because of the principle of equality of states that is used among other criteria in revenue allocation between the states and the federal government. That is why the principal consideration for revenue allocation for the purpose of attaining fiscal federalism is the derivation principle. This should as a matter of fact only be as an interim measure while the plan for a long term more sustainable principle is worked out. Under the 1999 constitution, the derivation principle shall be "*not less than thirteen percent".* This is much less than the fifty percent derivation that was obtainable under the 1960 and 1963 constitutions. In ideal federal systems, the federating units exploit resources located in their region and remit taxes to the federal government. This is what the country should work towards attaining.

CONCLUSION

Finally, in view of all the vexatious issues and apparent gaps in the 1999 constitution which is the document regulating the manner of federalism practiced in Nigeria, it is imperative that a sovereign national conference is convoked where all these issues will be addressed. In 2005 and 2014, such effort was made by previous administrations but the reports of same were never implemented. The national assembly should take the initiative in this regard while the cost of sponsoring delegates should be borne by the state governments. It is only within the confines of such assembly where the above seemingly intractable issues are dispassionately discussed and resolved will the nation attain unto true federalism. In the interim, the National Assembly should expedite its effort at Constitution review to accommodate the recommendations made above.

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