

POLITICAL ECONOMY OF NIGERIAN FEDERALISM AND THE RESTRUCTURING DEBATE*

Abstract

The paper is premised on the contention that the Nigerian political debacle is structural, systemic and economic especially, the failure to deal properly with the realities of the political economy of Nigerian diversity. Ab initio, the colonial administration which contrived the geo-political structure called Nigeria deliberately established it on a weak foundation. The union was foisted on the ethnic nationalities that constitute the country without their initiative negotiation or agreement. This situation was festered and compounded by periodic military interventions in the governance of the country followed by the usual despotic and deceptive transitional experiments in constitution-making, which culminated in the fraudulent promulgation of the 1999 Constitution of the Federal Republic of Nigeria. Thus, the democratic deficit baggage of the 1999 Constitution and its failure to properly address the problem of plurality are the major causes of the Nigeria's political quandary. However, the inarticulate provisions of the constitution continue to be exploited by the successive unpatriotic and unaccountable Nigerian ruling class to their advantage and to the detriment of the ruled. Today, Nigeria is drifting towards avoidable political crises that could degenerate to the collapse of the Nigerian structure, if not properly managed. Against the above background, the paper deconstructs the hybrid system of government under the cosmetic 1999 Federal Constitution and argues that fundamental restructuring which establishes an ideal or true federal constitution remains imperative for Nigeria to concretely and effectively address its existential challenges.

Keywords: Democratic Governance; Federalism; True Federalism; Pluralism; and Restructuring

1. Introduction

The political economy of the Nigerian federalism examines the Nigerian federal arrangement from the point of view of a governance system based on power relations that is inherently exploitative and invariably conflictual. It exposes the scaffold of the foundational Nigerian political miasma from its historical, political, economic, cultural, geographical and social background. Thus, the history of Nigerian constitutional development clearly demonstrates that the foundation of the structure which is today known as the Federal Republic of Nigeria was arbitrarily laid by Lord Lugard in 1914, with the amalgamation of the Northern and Southern protectorates. It is a notorious fact that their whole purpose was to serve their unholy mission, to wit, the British exploitation of the resources of the colonial territory and they did not border to address the plural character of their victim. It will be recalled that following agitations by the then Nigerian political elites, the Nigerian political structure was periodically restructured. The restructuring processes culminated in the modern Nigerian state under the Independence Constitution of 1960 and the Republican Constitution of 1963 respectively. These Constitutions clearly adopted and duly operated the federal system of government which eventually became deformed and distorted following the 1966 Military intervention in politics. The weak colonial political structure and the military distortions and their civilian puppet leadership and their undemocratic constitutions were the Achilles' heel in the failed Nigerian democratic experiment. The general opinion presently is that the Nigerian state is either not working or at least not working as it should, in terms of the deliverance of good governance, peace, stability and development. Indeed, 'it is not a secret at all that Nigeria is declining. From year to year, the situation doesn't get better'.¹ This is because no country can make real progress in its development agenda except it is built on a firm foundation that can promote good governance and constitutionalism. This chapter therefore argues that the federal structure established for Nigeria right from inception and which mutated into the faulty, inequitable and dubious 1999 Constitution, as well as the lopsided application thereof by unpatriotic leadership are responsible for Nigeria's debacle.²

The point is that the Nigerian political crisis cannot be divorced from the jaundiced federalism under the 1999 Constitution which was crafted to foster internal colonization after foreign colonization. In precise terms, the constitutional problems of Nigeria up to this present dispensation stem from the failure of the deliberately skewed and repressive Federal Constitutional structure to take adequate care of the obvious realities of the Nigerian diversity. These diversities manifest in inequality of the size of the sections of the country, the governance systems, the economic systems, cultural and religious systems etcetera. It cannot be gainsaid, that any aggregation of different nationalities into one political structure must be confronted with the problems of

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¹ K Okafor <https://www.legit.ng/1106055-problems-nigerian-federalism-solutions.html> (accessed 20 February 2019).

² OE Nwebo, 'The Place of the Local Government System in a Restructured Nigeria', Paper presenter at the Nigeria Bar Association Owerri Branch Law Week program, at Rockview Hotel Owerri, Imo State on 30th April 2021.

economic exploitation, minorities' fear of dominion by the major ethnic groups, and ethnic politics. Therefore, these diversities and fears are real and must be addressed constitutionally and reviewed as and when necessary, in conformity with new developments and challenges for the sustainability of the political structure.

Thus, the unaddressed or inadequately addressed diversities pushed the nationalities to inter-ethnic rivalry and agitation for resource control and power at the centre, particularly by the major ethnic groups of Hausa, Igbo and Yoruba as well as the minority fears. Although the above could be regarded as the reasons behind the adoption of the federal principle and the inclusion of the federal character provision in the Constitution,³ yet the problems persist. Ostensibly, the non-observance of, or lopsidedness in the observance of the above challenges substantially led to the military intervention in 1966, the civil war from 1967 to 1970 and the successive military governments till 1999. The palpable frustration and dissatisfaction in the country heightened the miasma of insecurity, agitations for self-determination, resulting in the quit notice given to the Igbos by the Arewa youth to leave their domain and also ignited the current cacophony of separatist voices along tribal and sectional lines. Thus, the way and manner the Nigerian federation is structured and run justifiably triggered the plethora of calls for re-structuring or 'true federalism' by various segments of the Nigerian polity as a foundational approach to concretely address the nation's socio-political and developmental challenges.

Against the above background, the paper argues that the democratic deficit in the Nigerian structural contraption and the exploitative governance system which the colonial administration implanted and handed down to their local compradors did not address the plurality issues. This remains the Nigerian albatross even under the 1999 Constitution and the root cause of the present Nigeria's political debacle. Therefore, a workable and sustainable governance system for Nigeria can only materialize under a federal system of government restructured under an autochthonous (peoples') constitution. Such constitution must guarantee to every segment of the Nigerian society the control, development and management of its God's given natural resources and potentials to its maximum benefit and to the benefit of the people of Nigeria in general. In dealing with the above issues, the work is structured into the following sections: The first section is this introduction; Section 2 briefly deals with the concept of federalism and explains its necessary tenets. Section 3 focuses on the evolution of the Nigerian federal structure and the imperative of a federal structure for Nigeria, as well as its culmination into the 1999 Constitution; Section 4 focuses on the justification and agitation for restructuring as the only option for achieving a true and sustainable Federal Republic of Nigeria, while section 5 is the concluding remarks.

2. Concept of Federalism

It is instructive to note at the outset, that there is no consensus amongst scholars on one definition of federalism. Hence, different scholars view the concept of federalism from different perspectives and approaches⁴ due largely to differences in their experiences and environments. This paper explains the concept of federalism to the extent that it enables us to situate and appreciate the irreducible minimum constitutional framework for the contextualization of the Nigerian federal constitutional misadventure. Explained etymologically, the term 'federalism' is coined from the Latin word *foedus* meaning treaty, compact, contract or agreement.⁵ The concept is not new as it was being practiced on a limited form in ancient Greece wherein some permanent leagues of independence states were formed. Ancient Israel also exemplified a union of constituent parts based on a common religion, nationality, a linkage of people and institutions without the sacrifice of their individual identities.⁶ Federalism is a result of historical evolution, springing from the necessity to achieve a compromise between concurrent demands for a union and for territorial diversity within a society. Hence, it can be vied as a voluntary form of political union of authorities based on need for special common purposes like defense, trade, communications and other reasons beneficial to the parties involved.⁷

³ See section 14 (2) of the constitution which is intended to promote ethnic balancing and equity in the distribution of national resources and appointments into national positions, as well as the establishment of the Federal Character Commission to ensure compliance.

⁴ There are various approaches including the classical, institutional, sociological and the bargaining approaches. For a more detailed discussion on this, see OE Nwebo 'Federalism under the 1999 Constitution: The Challenge of Democratic Legitimacy and Restructuring', in *Governance in Nigeria post-1999: Revisiting the democratic 'new dawn' of the Fourth Republic*, eds. Adeola and Jegede: Pretoria University Law Press (PULP), (2019) pp 43-63.

⁵ See Kalu and Bing quoted in O Adeleke 'Federalism as a Political Ideology and System of Government: The Theoretical Perspectives' [2017] (3)(9) IJAAR <<http://www.ijaar.org/articles/volume3-Number9/Social-Management-Sciences/ijaar-sms-v3n9-sep17-p7.pdf>> (accessed 10 April 2018)

⁶ Federalism: A Theoretical Perspective <<shodhganga.inflibnet.aci.in/bitstream/10603/95168/10/10-Chapter%202.pdf>> (accessed 10 April 2018).

⁷ IP Odion 'A Critical Assessment on Nigerian Federalism: Path to a True Federal System' <<http://community.vanguardngr.com/forum/topics/acritical-assessment-on-nigerian-federalism-path-to-a-true>> (accessed 10 April 2018).

Federalism has also been defined as a 'system of political organization uniting separate states or units in such way as to allow each to remain a political entity. A federal system differs from other methods of organizing states in that it is based on a contractual agreement by separate governments to share power among themselves'.⁸ Federalism has also been viewed as 'the interaction between conflicts, consensus and resources, which normally takes place in an arena-a value system which underpins the perception of these phenomenon by actors. It can be seen as a 'state of states' and a compromise form of unity which allows a balance between the need for cooperation in some areas and the wish for diversity in others, that is, 'self rule plus shared rule'.⁹ However, the modern concept of federalism is predicated on the theory and practice of the American Federation which was birthed in 1787. Using the American model as a yardstick, Wheare, an Anglo-Saxon scholar, regarded as the dean and doyen of classical federalism adopted the classical approach in describing the federal principle. He said thus: 'by the federal principle I mean the method of dividing powers so that general and regional governments are each, within a sphere co-ordinate and independent'¹⁰. Wheare provided the legal framework of a federal system which includes:

- (a) The division of powers among levels of government;
- (b) Written constitution showing this division; and
- (c) Co-ordinate supremacy of the two levels of government (three in the case of Nigeria) with regard to their respective functions.

Furthermore, Wheare argues that since federal government involves a division of functions and since states forming the federation are anxious that they should not surrender more powers than they want, it is essential for a federal government that there be a written constitution embodying the division of powers and binding all governmental authorities and from which constitution they derive their powers. Therefore, any of their action contrary to the provisions of the constitution is liable to be declared invalid by the Court. This is the essence of the principle of separation of power and the supremacy of the constitution. Secondly, if the division of powers is to be guaranteed and if the constitution embodying the division is to be binding upon federal and state governments alike, it follows that the power of amending that part of the constitution which embodies the division of powers must not be conferred either upon the federal government acting alone or upon the state or local governments acting alone. Thirdly, and most significantly, in the case of a dispute between the various levels of government as to the extent of the powers allocated to each under the constitution, somebody other than the federal, state or local government as the case may be, must be authorized to adjudicate upon those disputes hence, the critical role of the judiciary in maintaining the federal arrangement.¹¹

William Livingstone in his exposition on the idea of federalism went beyond the legal formulation of Wheare by emphasizing that the essential nature of federalism is to be sought for, not in the sharing of legal and constitutional terminology, but in the forces - economic, social, political, cultural that have made the outward forms of federalism necessary. Thus, a federal system of government is a device by which the federal qualities of the society are articulated and protected. In a federal society, there is a plurality of ethnic groups, with different historical, cultural, and linguistic backgrounds, but in which each ethnic group occupies a marked and distinct geographical location from the others. Therefore, federalism becomes the method for compromising unity and diversity or the institutionalization of compromise between demands for unity and diversity. However, the recent trend is the promotion of federal systems by setting up permanent machineries for inter-governmental and federal - state relationship and cooperation. Nwabueze¹² on his part defined federalism as an arrangement whereby powers of government within a country are shared between a national, country-wide government and a number of regionalized (that is territorially localized) governments in such a way that each exists as a government separately and independently from 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 others. He further explained that it is essentially an arrangement between governments, a constitutional device by which powers within a country are shared among two tiers of government, rather than among geographical entities comprising different peoples.¹³

⁸D Elazar quoted in Michael I. Ogu, 'Federalism as an Essentially Contested Concept: A Discuss' <<http://nigeriaworld.com/articles/2011/jan/301.html>> accessed 10 April, 2008.

⁹Ronald L. Watts 'Comparative Federalism and Post-Statism Vol. 30, No. 4, Essays in Memory of Daniel J. Elazar Oxford University Press (Autumn, 2000) 155-168 https://www.jstor.org/stable/3330936?seq=1#page_scan_tab_contents (accessed 20 April 2018).

¹⁰See KC Wheare in Patirk Ransome (ed.) *Studies in Federal Planning* Macmillan London, 1943, 34.

¹¹ See OE Nwebo, 'Federalism under the 1999 Constitution: The Challenge of Democratic Legitimacy and Restructuring', *Op. Cit.*, n 4 above.

¹²See BO Nwabueze, *Federalism in Nigeria under the Presidential Constitution*, Published by Lagos State Ministry of Justice (2003),

¹³ *Ibid.*

Looking at the various definitions of the concept of federalism as explained above, we can easily identify the common element in the various definitions. This is, the co-existence of concurrent governments within a state, with well-defined autonomy delineated in a constitution. This shows that the essence of federating is to realize the twin objectives of maintaining unity while also preserving diversity. This is particularly ideal in a pluralistic and multi-ethnic society like Nigeria where there are obvious differences in the peoples' cultural and religious lives.¹⁴ In the final analysis, federalism can simply be defined as a system of government in which governmental powers that exist in a country are shared between the central (federal or national) government and the component units (regions, provinces, states as the case may be).

3. Nigerian Federalism in Perspective

In the light of the features and tenets of federalism as highlighted above, this section briefly examines the evolution of federalism in Nigeria and specifically interrogates the 1999 Nigerian Constitution *vis-a-vis* the tenets of federalism as highlighted above. The examination of the trajectory of the evolution of federalism is intended to demonstrate that the challenges of the Nigerian federal arrangement are historical and no determined and sincere effort has been made to deal with the issues till today.

Evolution of Federalism in Nigeria

In analyzing the Nigerian federalism, it is instructive to recall that the chronicles of the evolution of federalism in Nigeria shows that prior to the advent of colonial rule in what is now known as Nigeria, there existed indigenous political institutions, spread across over not less than 250 independent nation-states embracing over 500 ethnic and linguistic groups. These indigenous communities had their various systems of administration before the British penetration of Nigeria and the annexation of the various colonies *vi et armis* and questionable treaties with the then traditional rulers and eventually established total control in and over the whole of territory. It is also noteworthy, that the decision of Lord Lugard to create a unified Nigeria on January 1, 1914, did not emanate from any negotiated decision of the indigenous people of Nigeria, but based on considerations of administrative convenience that guaranteed easy economic exploitation of the Nigerian peoples.¹⁵ Following the grant of self-governance to the regions and successive conferences with the resultant constitutional restructuring, Nigeria eventually became a federal state with 3 regions and later 4 and the federal territory of Lagos as capital. Under the 1960 Independence Constitution the federal structure was maintained under the British type of parliamentary system. In 1963, Nigeria became a Republic and the constitution gave exclusive powers in areas of fiscal and monetary policy, foreign affairs and defense to the federal government. During this epoch, the regions were relatively stronger than the center, with their respective constitutions, while revenue from the federal account was shared on the basis of derivation. The system did not however eliminate potential constitutional problems arising from inequality of the size of the states, dominance of the major ethnic groups, religious and ethnic politics and corruption, to mention but a few. The above problems eventually led to the military intervention in 1966 and consequently the civil war which lasted from 1967 to 1970. An attempt in May, 1966 by the first military ruler of the country, General Aguyi-Ironsi, a Southerner, to unify the administration of the country, which would have virtually turned the country into a unitary state, provoked violent reactions from the North. Then, on 29th July 1966, a number of Northern officers struck in reaction and in the bloody crises Col. Gowon (who became a General) in May, 1967 expanded the then country's four regions into 12 states in a declared effort to allay fears of sectional domination. Nigeria's bloody and turbulent political history between 1966 and 1970 settled once and for all the question of whether Nigeria was to be a federation or a unitary state in favor of federalism.

Before the military relinquished power in May, 1999, the number of States in the country had been increased from 19 in 1983 under General Babangida's regime to 36 under Abacha's regime respectively and the Federal Capital Territory, Abuja. Although the military had in form, maintained the federal structure for the country, by the very nature of military rule the centre had in all respects remained stronger than the states with increased legislative powers, increased control of the federation account and complete subordination of the financially weak states to federal control, thereby completely destroying the federal principle.¹⁶ Following the people's disenchantment and frustration, Nigerians became desperate in calling for an end to military rule. Upon the death of General Abacha, there was a deluge of spirited agitation for the summoning of a Sovereign National Conference to work out a new system of government for the country. Instead, General Abacha's successor as Head of State, General Abdulsalami Abubakar did not call for the conference but simply prepared and foisted

¹⁴See OE Nwebo, *Critical Constitutional Issues in Nigeria*, Owerri: Versatile Publishers, Rev. ed (2011) 23.

¹⁵See NJ Obiakor, 'Historical Evolution and Growth of Federalism in Nigeria', <https://www.pen2print.org/2017/02/historical-evolution-and-growth-of.html> (accessed 18 November 2018).

¹⁶See O. Aguda *Understanding the Nigerian Constitution of 1999*, Lagos: MIJ Publishers Limited (2000) 10-15.

the 1999 Constitution to the people on the very day of his departure from office.¹⁷ Till today, the legitimacy and the federal structure of the Constitution remain controversial.¹⁸

Federalism under the 1999 Constitution

In determining the extent to which the 1999 Constitution has attempted to entrench federalism in Nigeria, analysis of the power sharing formula between the levels of government under the Constitution is critical as the first tenet of federalism. In the first place, in an attempt to portray Nigeria as a federation, the constitution clearly described Nigeria as such and divided the country into 36 states with Abuja as the Federal Capital Territory. Apparently, Nigeria can be seen as a federation, at least in terms of structural delineation of the country into two levels of governments with functional jurisdictions. Thus, Section 2(2) provides ‘that Nigeria shall be a federation consisting of states and a Federal Capital Territory.’ Section 2 (3) provides for 36 states in Nigeria and lists them accordingly. Section 3(6) of the Constitution provides for 768 Local Government Areas in Nigeria, thereby purporting to have added a third tier or level of government for the country, which is a new experiment in the federal principle. It is to be noted as explained earlier, that the classical definition of the federal principle by Wheare and Nwabueze, defined federalism within the limits of two federating units or two levels. Be that as it may, in terms of structure, one can argue that one important feature of federalism has been satisfied under the Nigerian constitutional arrangement. The above provisions provide *prima facie* evidence of federalism under the Constitution. However, the extent to which each tier of government exists within its own sphere, co-ordinate and independent under the 1999 Constitution remains questionable. This can be examined against the background that the totality of the overwhelming centralized functions being exercised by the federal government in relation to the state governments. This relationship is the critical determinant of ‘true’ or ‘real’ federalism as opposed to the present centralized unitary system under the 1999 Constitution.¹⁹

It is significant to note that the method of division of powers (legislative, executive, judicial functions and otherwise) among the tiers of government and their independence are also critical determinants of true or real federalism. In this regard, the legislative powers of the Federal Government are vested in the National Assembly consisting of a Senate and a House of Representatives, while the legislative powers of a state are vested in the House of Assembly. The Constitution went further to define the areas of law-making competences for the respective governments. Part 1 of the 2nd Schedule contains the exclusive legislative list wherein the federal legislature has exclusive jurisdiction to make laws. These include: Accounts of the federal government, aviation, arms, ammunition and explosives, banks, citizenship, currency, defense, external affairs, exchange control, et cetera. Part II of the schedule contains the concurrent legislative list in respect of which both the federal and state governments have concurrent law-making powers. These include revenue allocation, antiquities, archives, collection of taxes, agriculture, education, et cetera. These lists clearly show the dominance of the federal government in terms of law-making powers. Unlike the 45 items in the exclusive legislative list under the 1960/63 constitution, there are 66 items in the 1979 Constitution and 68 items in the 1999 Constitution. Basic state matters such as drugs and poisons, labor and trade union matters, meteorology, police, prisons, professional organizations, registration of business names, incorporation of companies and others were all transferred to the exclusive list from the concurrent list. Borrowing within or outside Nigeria for the purposes of the federation or of any state is included in the exclusive legislative list. The idea of giving power to the federal government by legislation to determine national minimum wage which is binding on states that may not be able to pay and federalism is a contradiction. In the same manner, several matters which are residual and ideally should have been within the legislative competence of the states are contained in the concurrent list.

On the vexed issue of fiscal federalism, which has to do with financial autonomy or resource control/revenue allocation to the tiers of government, this cannot be realized without an allocation regime that is fair, just, equitable and acceptable to all the component units. The current inability of states in Nigeria to meet most of the elementary requirements of government such as payment of staff salaries even with so called bell out handout from federal government, and provision of basic infrastructure is an antithesis of autonomy of states in a federal arrangement. The combined provisions of section 44(3) and Part 1 Item 39 of the 2nd Schedule (the Exclusive Legislative List) has the resultant effect of preventing the states in Nigeria from harnessing their non-oil resources making them unproductive and heavily reliant on the federal government. Section 44(3) states that the

¹⁷The 1999 Constitution was promulgated by the military upon the recommendation of the Constitution Debate Co-ordinating Committee (CDC) headed by Justice Niki Tobi which recommended adoption of the 1979 Constitution with relevant amendments from the 1995 draft Constitution.

¹⁸See OE Nwebo, ‘Federalism under the 1999 Constitution: The Challenge of Democratic Legitimacy and Restructuring’ (2019). *Op. Cit.*, n 4 above.

¹⁹See IE Sagay, ‘Federalism in an Emerging Democracy: A Case Study of Nigeria’ lecture delivered on 28 May 2003, [www.profitsesagay.com/pdf/TRUE%20FEDERALISM%20IN%20AN%20EMERGING%20DEM%20\(TINUBU%20LECTURE\).pdf](http://www.profitsesagay.com/pdf/TRUE%20FEDERALISM%20IN%20AN%20EMERGING%20DEM%20(TINUBU%20LECTURE).pdf) (accessed 16 April 2018).

entire property in and control of minerals, mineral oil and natural gas in, under or upon any land in Nigeria shall vest in the Government of the federation and shall be managed in such manner as may be prescribed by the National Assembly.’ Furthermore, item 39 on the exclusive list puts mines, minerals and even geological surveys within the sole purview of the federal government. These provisions are antithetic to the federal principle.

Federalism under the 1999 Constitution can be contrasted with the position under the 1963 Republican constitution which in section 140(1) provided that each region be paid a sum equal to fifty percent of the proceeds of any royalty received by the federation in respect of any minerals extracted in that region as well as mining rents, thereby setting definite parameters for fiscal federalism. This can also be contrasted with Section 162 (2) of the 1999 Constitution which provides that in evolving a revenue allocation formula, the President shall table before the National Assembly proposals considering principles of population, equality of states, internal revenue generation, landmass, terrain and population density, also that the principle of derivation should be at least 13%. It is submitted that this provision is vague, ambiguous and does not provide clear ambits for financial autonomy. On the other hand, section 162(5) fails to create financial autonomy for the local government councils as they receive joint allocation with the states which also determines how the money is spent.

Crisis of Local Government System under the 1999 Constitution

One of the crises of federalism in the 1999 Nigerian Constitution arose from the apparent inchoate provision of Section 7 (1) of the Constitution thus:

The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every state shall, subject to Section 8 of this Constitution ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.

The above provision amongst others gives credence to the misconceived belief that the Nigerian federal structure under the Constitution established the Local Government system as a third tier or level of government. In our view, the provision is an inchoate attempt to establish a third-tier or level of government with relative autonomy.²⁰ This attempt is apparent from the express guarantee of the existence of a system of local government by democratically elected local government councils. It has been noted elsewhere,²¹ that the provision is a new experiment on the federal principle. Ordinarily this could be described as the most progressive attempt at local government repositioning in Nigeria since independence. However, our position is that the purported intension was not made manifest. It is curious that the Constitution after guaranteeing a system of local Government by democratically elected local Government councils went ahead in the same Section 7(1) to provide that ‘the government of every state shall, subject to section 8 thereof, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils’. Arguably, this second leg of the section derogates from the principle of separation of powers in the context of levels of government in a true federal arrangement. Hence, the existence of the local government is to be ensured, not by any guaranteed provision of the constitution but by the State, which is empowered to determine the establishment and functioning of the local governments. In the light of the above provision, it is submitted that the Constitution has wittingly or unwittingly failed in its attempt to secure the existence and the autonomy of the local government system and rather left it for the States. This is clearly inconsistent with the position in an ideal federal constitutional arrangement.²²

In line with the above reasoning, it is further submitted, that Section 7 remains inchoate and by necessary implication has not succeeded in achieving what it probably intended. Rather, it only succeeded in tying the local government councils to the apron strings of the State Governments as was the case under the 1979 Constitution. Therefore, it is possible in our view for a State Government to, by a law of the State, restructure the existing local government system within the state, dissolve an existing local government council and have same replaced with a new one. However, in line with a number of decided cases, the penchant of State Governments to dissolve elected local government Councils and the appointment of Caretaker, Interim or Transitional Committees in their place, has not only been declared unconstitutional, illegal, undemocratic,

²⁰ For the analysis of the problem of the local government system as third tier of government in Nigeria, see OE Nwebo, *Critical Constitutional Issues in Nigeria*, Owerri: Versatile Publishers, Rev. ed (2011). See pp 96-105.

²¹ See OE Nwebo, ‘Federalism under the 1989 Constitution: A new Experiment on the Federal Principle’, *Abia State University Law Journal*, vol. 1, pp. 5-13.

²² See OE Nwebo, *Critical Constitutional Issues in Nigeria*, *Op. Cit.*, n 20 above. See also OE Nwebo, ‘The Place of the Local Government System in a Restructured Nigeria’, *Op. Cit.* n 2 above.

immoral and contrary to the spirit or intendment of the Constitution.²³ For instance, the Supreme Court in *Governor of Ekiti State and Ors v. Prince Sanmi Olubunmu and 13 Ors*,²⁴ upheld the toga of sacrosanctity of the election of Local Government officials when it held thus:

Having thus guaranteed the system of Local Government by democratically elected Local Government Councils, the Constitution confers a toga of *Sacrosanctity on the election of such officials* (emphasis mine) whose electoral mandates derive from the will of the people freely exercised through the democratic process: put differently, the intendment of the constitution was to vouchsafe the inviolability of the sacred mandate which the electorate at that level democratically donated to them.²⁵

By the above decision, it can be taken for granted that the election of such officials into their offices and their tenure is clothed with constitutional force. They cannot therefore be abridged without breaching the constitution from which they derive their force. Therefore, the common practice of State Governors in dissolving elected Local Government Councils is unconstitutional and null and void. However, it is submitted that the above decision only protects the tenure of elected local government officials where they exist but did not pronounce on the presumed autonomous status of the local government system. In other words, the above decision neither resolved the penumbra state of Section 7 of the Constitution nor did it derogate from the powers of the State Governments to ensure the existence of local government councils under a law which provides for the establishment, structure, composition, finance and functions of such councils.

Thus, over the years, especially since the return to democracy in 1999, local governments in Nigeria existed at the pleasure of the state governments in a manner that frustrates or ridicules their purported autonomous existence as a federating unit, despite the decisions of the Courts. It is submitted that the audacity of the state governments in abusing the provisions of Section 7 of the 1999 Constitution is derived from the leeway provided for them under the same Section 7 which as we have stated earlier, empowers the state governments to 'to ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils'. In other words, this provision provides the loophole which the State Governors or Governments can ostensibly capitalize on, to constitute their own loyalists as local Government officials and to arbitrarily disband them at will. Although the establishment of unelected local Government officials can be said to be an aberration, nevertheless, the States continue to exploit the provisions of Section 7 to their advantage and hardly find it convenient to ensure the existence of democratically elected local Government officials.

The point being made here is that in an ideal federal constitution, the existence of the local government system as a tier of government must be decisively and unequivocally established by the Constitution stating its structure, composition, functioning and financial autonomy of such Councils. Therefore, it is submitted, that the local government system under the 1999 Constitution, having fallen short of the necessary requirement of independent existence from the State Government and co-ordinate supremacy in its jurisdictional areas,²⁶ cannot be said to be a third tier of government in Nigeria. Considering the inchoate provision of Section 7 of the Constitution and what is being practiced today, it is obvious that the local Governments remain appendages of the states as was the practice under the 1979 Constitution and left to be managed in accordance with the 1976 Local Government Reform.²⁷ The position of the local Government system under the 1999 Constitution demonstrates clearly the hybrid and confused nature of Nigerian federal arrangement.

4. Justification for the Agitation for Restructuring

It is noteworthy that the main drive towards political restructuring in Nigeria is the recognition that the existing state institutions, particularly at the center, cannot adequately apprehend, comprehend and resolve the existential internal primordial contradictions and the emerging global challenges of good governance. Innovations and development of knowledge-based economy cannot be possible without the necessary policy reforms and

²³ See *Eze v Governor of Abia State* (2014) 14 (NWLR) (Pt. 1426) and *Governor of Ekiti State and Ors v. Prince Sanmi Olubunmu and 13 Ors* (2017) 3NWLR (Pt. 1551) 1

²⁴ See *Governor of Ekiti State and Ors v. Prince Sanmi Olubunmu*, *ibid*

²⁵ Per Nweze JSC in his lead judgement in *Governor of Ekiti State and Ors v. Prince Sanmi Olubunmu and 13 Ors*, *ibid*, p. 33.

²⁶ In a true federal arrangement, the existence, structure, control and management of each level of government should be owed to the constitution and not to any of the tiers. Furthermore, the non-inclusion or mention of the local governments under Section 2(2) of the Constitution means that the local governments are excluded as a tier of government in the Federation.

²⁷ It must be noted that this view is without prejudice to the brilliant and impeccable *ratio decidendi* in *Governor of Ekiti State and Ors v. Prince Sanmi Olubunmu* (*ibid*), which had nothing to do with the status of a local government as a tier of government as this did not arise as an issue before the Court.

mobilization of the citizenry to embrace development agenda which must be based on trust. There is therefore the need to restructure in order to address these internal contradictions which have been discouraging the people from taking advantage of the available massive environmental local economic opportunities waiting for exploitation. Hence, the lopsidedness and inequity in the structure and the practice of federalism in Nigeria have remained a recurring cause of agitations among the constituent nationalities. These agitations border on how best to grapple with the challenges of securing an efficient central government that can preserve national unity and at the same time allow the diverse federating units the free scope to live their lives and develop at their own pace. The need to operate a federal system under which the federating nationalities or units are allowed to develop at their own pace was aptly encapsulated in the recent address of Vice President, Prof Yemi Osinbajo, on Thursday, 15 October, 2021 when he charged the 36 states to think like sovereign states in the area of internally generated revenue to be able to survive and further advocated for the 36 state governors to start investing in areas where their states had comparative advantages to shore up their IGR with a view to stop their reliance on federal allocations.²⁸ He also advised that 'there has to be a collective change of mindset and that there is the need for the sub-national units should begin to think like a sovereign state.'²⁹ The question however, is whether the way the 1999 Federal Constitution is structured encourages the states (federating sub-nationals or units) to think in that manner. Here lies the dilemma of the 1999 Constitution and the overbearing influence of the center on the one hand and the subordination of states to the position of dependency on hand-outs from the center on the other. In this connection, it is instructive to observe that while addressing the United Nations on October 13 2021, Thabo Mbeki, South Africa's former president listed African countries where the failure to deal with diversity was a root cause of conflict, notably 'from the Biafran war in Nigeria in the late 1960s to the current clashes in Ethiopia's Tigray region'.³⁰ He further cited 'the centrality of failure properly to manage diversity' in the conflicts in Congo, Burundi, Ivory Coast and Sudan. He also pointed to the 2004 report of the Sierra Leone Truth and Reconciliation Commission 'which tells the naked truth, that it was as a result of the failure to manage diversity that the country experienced a very costly 11-year war which started in 1991' -- and there is a similar failure to manage diversity 'in the violent conflict which has been and is still going on in Cameroon.' In driving home his point, Mbeki recalled that the Nigerian government was victorious against secessionist-seeking Biafra 50 years ago but its leaders announced 'that they would follow a policy of no victor, no vanquished.' However, what Mbeki did not say is whether the said policy was duly implemented. On the same occasion, UN Secretary-General Antonio Guterres cited a UN-World Bank study that found 'many conflicts are deeply rooted in longstanding inequalities among groups,' which leave people feeling excluded and marginalized because they are denied opportunities based on their culture, race, skin colour, ethnicity or income. The above statements aptly describe the Nigeria's internal plurality challenges and contradictions which the 1999 Federal Constitution and the ruling class did not deal with, thereby leaving the country in a fragile state, hence, the imperative of constitutional restructuring in order to deal with the existential Nigerian political and socio-economic challenges.

5. Conclusion

It has been demonstrated that the existing constitutional framework was not built on a foundation that is capable of promoting unity in diversity. Accordingly, the governance levels were not constitutionally structured to promote democratic governance and sustainable development and as such the system could not propel patriotism and national development. The situation has been traced to an historical disaffection amongst the federating units which keeps reverberating simply because they did not come together on their own volition but for the administrative convenience of the British colonialists.³¹ On the other hand, as we have noted earlier, the successive military governments took Nigeria many steps backwards from where the country was before 1966. As a result, Nigerian leaders deliberately abandoned the tenets of true federalism and were rather busy exploiting the system for their selfish and primordial ends. Furthermore, it has been demonstrated also, that the Nigerian federal structure under the 1999 Constitution is only federal in name and complexion but not in body and soul. For instance, the states are entirely dependent on the Federal Government which governs the country as if it is a unitary system of government, while the local government system as a third tier or level of government is at best a shadow of its ideal nature and accordingly a mockery of the tenets of federalism. Therefore, the paper advocates for a fundamentally restructured federal government as that adequately addresses the reality of the Nigerian plurality challenges as the only panacea to the Nigerian political quagmire. This must be undertaken in such a manner that power can be constitutionally devolved to the federating units considerably.

²⁸ Osibajo spoke in Ado Ekiti during the Fountain Summit 2021 (Economic Development and Investment Summit) with the theme, 'Investment Attractiveness and Economic Development: Lessons for Sub-nationals,' shortly after he inaugurated the Ekiti State Civic Center, Ado Ekiti, as part of activities for the three years anniversary of the Dr Kayode Fayemi administration. See <https://punchng.com/osinbajo-urges-creativity-by-states-on-revenue-generation/> (accessed 18 October 2021).

²⁹ *Ibid.*

³⁰ <http://www.outlookindia.com/newscroll/un-told-failure-to-deal-with-diversity-is-root-cause-of-wars/2177470> (accessed 18 October 2021).

³¹ This is part of the problems that put the people of Nigeria in a position that can now be likened to a forced marriage that the parties dislike but dare not leave.