THE NATIONAL DISCOURSE ON RESTRUCTURING: THE WAY FORWARD

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PREFACE

The President of the Federal Republic of Nigeria, Alhaji Muhammadu Buhari, was reported recently to have said that the problem with Nigeria today was not the restructuring of the polity but "the process". I respectfully profoundly disagree with him.

Over the years, I have argued that a National Conference would be unnecessary if the National Assembly could address five constitutional issues in the 1999 constitution and restore instead the provisions as contained in the 1963 constitution. The issues are:

1. Principle of 50% allocation to the state of origin of the proceeds of royalty received by the Federation in respect of minerals extracted in that state, and also 50% of mining rents derived from any state, or origin as provided in the 1963 constitution.

2. Besides section 7 of the constitution which enshrines democratically elected local government system under a law by a State House of Assembly, all references to local government should be expunged from the 1999 constitution. Local governments or "Provincial Administrations" as they were called were a function enshrined in the 1963 regional constitutions. There was no reference to "Provincial Administrations" in the Constitution of the Federation. It has always been a state matter or function in all our constitutions since 1900 on the proclamation of the two protectorates.

3. Return to a "Federal" Judicial system as in the 1963 constitution instead of the centralized system in the 1999 constitution.

4. Restoration of independent candidature in our electoral process instead of the party dictatorship enshrined in the 1999 (just as in the 1979) constitution.

5. Section 6 (6) (d) of the 1999 constitution (as in the 1979) which protects army rule since January 1966 should be expunged from the constitution.

My position on those issues remain unchanged.

In the past year however, I have examined all our previous constitutions since 1922 in greater detail than ever before. And I have come to the irresistible conclusion that the year 1979 was when Nigeria ceased to be a Federation, and a unitary system of government was forced or imposed on the country. This calls for a review of the constitution instead of cosmetic constitutional changes by the National Assembly.
Chapter IX of the 1963 constitution (which was in force till 30th September 1979) dealt with ***Finance***. It was in two parts : Part 1 dealt with the ***Public Funds of the Federation***, and Part 2 with the ***Allocation of revenue***. Part 2 of that chapter which provided for 50% "allocation of revenue" to the region or state of origin was expunged from the 1979 constitution. Under the 1979 constitution, "all revenues or other moneys" raised or received by the Federation "shall be paid into and form one consolidated Revenue Fund of the Federation", including "mineral

royalties and mining rents", and be called ***Federation Account***. It was the National Assembly that decided what amount of the Federation Account went to the States and Local Governments. The 1999 constitution similarly concentrates financial power in the Federal Government. All that explains why State Governors queue up will begging bowls at Abuja periodically for doles.

Besides the issues raised in our critique of the 1999 constitution in my book "Engaging with History", there are residual powers exclusive to the State Governments which the Federal Government has either stolen completely from the States or invaded and made concurrent.

The powers of the Federal Government have increased since 1979, are increasing at the expense of the States, and ought to diminish.

We have placed some emphasis on the 1979 constitution in this treatise because the Constitution of the Federal Republic of Nigeria, 1999 is a carbon copy of the 1979 constitution. Like its predecessor, the 1999 constitution is "**federal**" only in name. It is more "unitary" in content than the 1979 constitution.

Let us get back quickly to the issue of the moment now that the two major parties are agreed on restructuring the polity, and have publicly set down their views on changes to the Constitution of the Federal Republic of Nigeria, 1999. If the will is there, and there is honesty of purpose, a new constitution can still emerge in 2019.

In this exercise, as in politics generally, ethnicity must be kept out and confine itself to promotion of culture. Religious leaders should confine themselves to the church and the mosque; and pray for emergence of One Nigeria, free and strong. The church and the mosque should also pray for the emergence of political leaders whom money will not buy, leaders who will speak and act in the best interest of all ethnic nationalities, all Nigerians and not the place of their birth or ethnic background. What Nigeria needs today are Nigerians. We have them in very short supply- true patriots. What we have in very large supply are Hausas and Fulanis, Igbos and Yorubas, Ijaws and Kalabaris, Efiks and Ibibios, Edos and Itsekiris and Urobos, Kanuris and Nupes, Tivs and Idomas "et al",

The season of political mercenaries has begun : PDP yesterday, APC today, but now on the way back to PDP, - or vice versa. Ideology or political conviction is completely absent. Money speaks – or naked power ! Who is to bell the cat? What is the organ for change?

The organ for change is not the National Assembly. The legislative organ, which acts often times as an "**executive**" organ of government – and occasionally as "**the judiciary**" - is part of the problem rather than the solution. The age calls for a Constituent Assembly, made up of delegates from the major political parties with electoral success at legislative and state elections and the civil societies. It is for the President, in consultation with the National Assembly, to place a bill before the Legislature to set up a National Conference to consider and amend the 1999 constitution, and to hold a referendum thereafter.

Finally, it appears that the debate about the choice between presidential and parliamentary system is not entirely closed. A Prime Minister is not only the head of the "**executive**" organ of government, he is also in control of the legislature. He weids more power than the President who controls only the executive organ of government.

I commenced this exercise by discussing the issues discussed earlier with a wide range of friends and political associates.

I must recognize two platforms where every week I and friends gather to discuss political matters of the moment. The first is Yoruba Tennis Club where at the 'Basilica' reserved for members only the 'brothers' over 80 years of age meet every Monday late afternoon to enjoy "akara" "mosa" and "puff puff". A great deal of what follows in this booklet was discussed with passion and intellect.
My friends and "brothers" at the Basilica said we should call this modest effort "The Basilica Declaration" of Yoruba Tennis Club !

The other platform was Table 2 at the Metropolitan Club, Lagos. After lunch every Tuesday, some members more representative of Nigeria than Yoruba Tennis Club engage in after lunch discourse on political and economic problems of the country. A lot of what follows was more widely discussed and fleshed out after dinner for hours at Table 2, and at the monthly lunch of the Thursday Group at Metropolitan Club.

I acknowledge my appreciation for the encouragement I received from both platforms as well as from public lectures and symposia in the publication of this treatise.

I acknowledge with thanks the assistance of my nephew, Mustapha Tosin Balogun of Lagos State University for organizing the publication of this booklet and for proof reading, I also acknowledge the assistance of Mrs. Basirat Ojo-Adubi of Femi Okunnu & Co who produced about thirty-nine drafts of this publication on her computer.

Any mistakes in facts or dates however are entirely mine.

Lateef Olufemi Okunnu, SAN, CON. **1st March 2018**

EPILOGUE

Hear President Cyril Ramaphosa in his maiden address to the South African Parliament a few weeks ago.

> "There are 57m of us, each with different histories, languages, cultures,
> experiences, views and interests.
> Yet we are bound together by a common destiny".

And listen to King's College, Lagos school song, written almost a hundred years ago.

> "Floreat Collegium" shall our motto be,
> Let us shout it boldly, for her sons are we,
> Nurtur'd in her classrooms in our early youth
> Where we learn to cherish chivalry and truth,
> Learn to pull together, each one with the rest,
> Playing up and striving each to do his best".
>
> Chorus:
> "This shall be our watchword "always play the Game"
> Sound the Old School's praises, trumpet forth her fame
> Though of many nations we will not forget
> That we all are brothers with a common debt;
> Let us pay by giving as we forge ahead
> Service to the living, honour to our dead".

There are today at King's College over 3,000 students from every state in Nigeria. But the students do not ask each other, nor do they care to know, which state their contemporaries come from, and that has been down the ages and part of our lives. We did not care – and the students still do not - to know. We always regard ourselves as Nigerians "with a common debt".

And hear in part our National Anthem.

> "Arise, O compatriots, Nigeria's call obey
> to serve our fatherland,
> with love and strength and faith".
>
> "Though tribe and tongue may differ
> In brotherhood we stand
> Nigerians all and proud to serve Our sovereign motherland".
>
> I pledge to Nigeria my country.
> To be faithful, loyal and honest.
> To serve Nigeria with all my strength.
> To defend her unity, and uphold her honour and glory.
> So, help me God.

Fifty seven years after independence, Nigeria is still driven by ethnic strife more than ever before.

Fifty seven years on, there is a big chasm – bigger and bigger each day – separating the people of Nigeria, separating what we call “ethnic nationalities”.

Fifty seven years since independence, the “brotherhood” the founding fathers craved for, the “motherland” of our dream in my youth, is now a mirage.

All is not lost. I still have dreams.

I dream of a new breed of men and women, shorn of ethnic jingoism, imbibed with the spirit of nationalism, divided only by political ideology.

I dream of a new breed of men and women,

Faithful, loyal and honest

To serve Nigeria with their blood,

To defend her unity and uphold her honour and glory.

A new Nigeria may yet emerge.

So, help us all, O God.

For my King's College dreams may still come true

BEYOND THE NATIONAL DISCOURSE ON RESTRUCTURING: WHAT SHOULD BE THE STATUS OF LAGOS?

The term "restructuring" means different things to different people.

To some of us, it means transfer of certain "functions" from the Exclusive Legislative List assigned to the Federal Government in the Second Schedule of the Constitution[1] to the State Governments. These are functions over which only the National Assembly has power to make laws to the exclusion of the state legislatures (State Houses of Assembly). The belief is that over the years especially because of military intervention, the Federal Government had taken over more legislative powers from the states outside what the constitution hitherto provided or assigned to it.

"Restructuring" to some others denotes political division of the country into "states" or "regions" or "zones". Some sections of Nigeria prefer the federating units (states) to remain as they are now – 36 in number. Some prefer more than 36 states! Some people recommend a reduction in the number of existing states. There are other people who recommend mergers.

There are those who, by restructuring, mean the reduction of the number of states to six in number, popularly called "Zones". It may be noted that never in the history of Nigeria had there been six "protectorates" or "colonies" or "regions" or "states". The nearest to number "six" was the idea of Mr. C.L. Temple, second in command to Lord Lugard in the Colony (Lagos) and Protectorate of Southern Nigeria, who advocated division of Nigeria into six protectorates as against Lord Lugard's two protectorates during the debate on "Amalgamation" in 1913 - 14. Lord Lugard won the debate. If Temple had won the debate, the history of Nigeria would have been very different from what it is today. There could have been no issue about one protectorate or region being greater in size and population than all the others put together as there was before and after independence. About this, more anon.

"Restructuring" to some Nigerians means creation of more states in the Federation as earlier stated. The National Conference reluctantly put together by President Jonathan in 2014 recommended creation of additional 18 new states, making a total of 54 states in the Federal Republic of Nigeria. There was no proposal about how to meet the high cost of governance, now that at least thirty out of thirty-six existing states cannot pay the salaries of their civil servants which are usually in arrears, or the pensions of retired citizens.

1. See, section 4(1) – 4(3) of the Constitution of the Federal Republic of Nigeria, 1999.

Some of our fellow Nigerians take lack of federal amenities in their communities as the need to restructure the polity. And to other ethnic communities, failure of the Federal Government to give plumb appointments to their sons and daughters is the main reason for their call or demand to "restructure" Nigeria. They allege that their communities are being marginalized in the distribution of amenities or plumb appointments to offices of state.

The two largest political parties have also joined the great debate from two different positions.

In the last two years of his tenure, President Goodluck Jonathan from his initial cool attitude to the idea suddenly found the necessity to summon a National Conference to consider the issue of "restructuring". The People's Democratic Party of President Jonathan participated fully at the conference and the party is now calling for the implementation of the Report of the Conference. The opposition parties, now merged as the All Progressive Congress, refused to participate in the proceedings at President Jonathan's conference.

The APC, as the party of President Muhammadu Buhari, now says it is in favour of restructuring. It was in the party's manifesto at the presidential election in 2015, though it gave no details. The party is now holding town meetings all over the country to determine the views of the people. People's Democratic Party has refused to take part in the on-going exercise on "restructuring".

There are two other variations of "restructuring" which have occupied part of our political space. There are some influential voices who, while acknowledging the existence of the federal government with defined powers nonetheless advocate establishment of a government in each of the so-called six geopolitical zones, while retaining the existing 36 states as the federating units. This matter featured very prominently at the 2014 National Conference. This idea turns "federalism" or a federal system of government on its head! Incidentally, the "six geopolitical zones" are not part of our constitution and have never been so. They are an administrative device in recent years for distribution of political largess!

We must not ignore the views of two of our largest ethnic "nationalities" in this debate.

A few years ago, “restructuring” to a large section of our Igbo-speaking Nigerians in the South East of the country centered on their demand for “Igbo” presidency and complaint about “marginalization”. That was the stand of Ohanaeze, a cultural group but now a political force. This was followed by a demand for a Republic of Biafra. In recent days, the Governors of the five states in the South East have publicly dissociated themselves from the call for an independent Republic of Biafra and proclaimed that the unity of Nigeria is indivisible. The call for “Biafra” today is limited only to South Eastern States.

In a recent article entitled “Biafra: Legal, economic and social questions”, the Deputy Senate President, Ike Ekweremadu, has redefined the agitation for restructuring thus:

> “**The South-East region, in particular, has no doubt, been at the worst receiving end of the structural imbalance with ripples of disequilibrium in the distribution of resources and opportunities since the end of the civil war in 1970. These, as we know, are at the root of the disquiet and agitation by various groups for sovereign state of Biafra”.**

He added ominously:

> **“The Igbo have large chunk of their investments outside the South-East region. Our people have invested heavily in every nook and cranny of Nigeria. They are into trading. Imagine a situation where a Republic of Biafra would have to depend on Nigerian passports to travel out”**.

He calls for “a federal restructure that guarantees substantial autonomy, justice, equity, security and prosperity for Indigbo wherever they live”.

There is one other issue which must now be put to rest: the claim of the Indigbo for an extra state to reach parity with the Western Region, first amplified at the 2005 Reform Political and Constitutional Conference. This is not justified by history.

The Western Region as it was at independence in 1960 now consists of seven states (Delta, Edo, Ekiti, Ogun, Ondo, Osun, Oyo and the Colony Division of Lagos State)[2], on the other hand, the Eastern Region in 1960 now consists of nine states (Abia, Akwa Ibom, Anambra, Bayelsa, Cross River, Ebonyi, Enugu, Imo and Rivers).

2. Colony Division was part of the Lagos Colony since 1861, but exercised from Lagos Colony in 1951 and merged with the Western Region.

The demand for an extra state for Indigbo to attain parity with Western State is not justified by the facts on the ground.

We now come to the Yoruba Summit, attended by some handpicked main stream delegates from Ogun, Oyo, Osun, Ekiti and Ondo States, mostly Afenifere and some PDP members. APC Governors in the region and members generally were not part of it.

At its Conference held at Ibadan on 7th September, 2017, Yoruba Summit resolved, among others, as follows:

1. Nigeria must return to a proper federation as obtained in the 1960 and 1963 constitutions.
2. The federating units – whether states, zones or regions - must themselves be governed by written constitution.
3. Nigeria shall be a federation comprised of six regions and the Federal Capital Territory, Abuja.
4. The Regions shall in turn be composed of states.
5. Each Region shall have its own constitution containing enumerated exclusive and concurrent legislative lists regarding matters upon which the regions and the states may act or legislate.
6. States as presently comprised in the geo-political zones into which they fall, which shall become regions, shall continue to exercise the executive, legislative and juridical functions currently exercised at that level of government.

The position of the Yoruba Summit is very confusing.

The call to return to 1960 and 1963 constitutions is very clear and unambiguous. Both constitutions provided for “regions” as federating units, along with Lagos Federal Territory. Both contained 43 items on the Exclusive Legislative List. Both were federal in character and content. And they both provided for a constitution for each of the 3 regions in the 1960 constitution or 4 regions in the 1963 constitution.

The first two recommendations of the Yoruba Summit are in keeping with the principles of federalism.

The recommendation of Yoruba Summit that:

> "**each region shall have its own <u>constitution containing enumerated exclusive and concurrent legislative lists regarding matters upon which the regions and the states may act or legislate"</u>**

however completely contradicts the principle of federalism as propounded by Prof. Wheare and Prof. Nwabueze as will be discussed presently.

The recommendation also contradicts the 1960 and 1963 constitutions, both of which bore the hallmark of federalism in its purest form. It portends a confederation, not a federation. It is wholly unacceptable.

A group of states, with legislative and executive powers comprised in a zone or region, also with legislative and executive powers can never constitute "federating units in a federation".

Finally, a suggestion that there should be intermediary level of legislative and executive authorities to be called *regions or zones* between the Federal Government and State Governments is repugnant to common sense and financial prudence. Where will the money (supply) come from, with 30 states now unable to pay salaries of their employees several months in arrears?

At a meeting with President Buhari reported recently in the media, the thirty-six state governors said to him:

> **"Our mission here is simple. We are here to thank Mr. President for his concern about the state of the economy and for giving us several supports, ranging from bailout, restructuring our debts, Paris Club exit payment"**.

They also:

> **"requested that the President ensure the release of the 50% of the Paris Club loan refund so that the funds could be built into the 2018 budgets of the state governments. The various interventions the current administration had extended to states included bailouts, Paris club loan refund and budget support".**

Such is the dependence of almost all the states on Federal Government financial support to run their administration that makes <u>federal</u> Nigeria a complete misnomer.

The position of the Ijaws and other Nigerians from the oil producing states in the River Niger Delta on the issue of "restructuring" requires no elaboration. We speak about the Ijaws in Bayelsa State, the Ijaws and the Kalabaris and Igbos (in Diobu) in Rivers State, the Urhobos , the Ijaws, the Igbo and the Itsekiri in Delta, the Ibibios in Akwa Ibom, the Efikis in Cross River State, and people in the other oil producing areas in the region.

To them, "restructuring" means "resource control" – full control of their oil wealth and the oil resources in their region, as in the United States of America. Each oil producing state shall give or allocate to the Federal Government a certain percentage of the profit from oil production under its control.

In the long conflicting debate on "restructuring", the old Northern Region as a block remains almost completely silent. The fact on the ground is that the old Northern Region died in 1966/67. It was finally laid to rest on 27th May, 1967. A United North since the death of Sadauna of Sokoto, Sir Ahmadu Bello, the voice of the North, had long been silenced.

The Arewa Consultative Assembly remains a "sounding board for old friends" to protect perceived common Northern interests. There are no known common northern interests between Plateau or Benue State on the one hand and Sokoto or Kano state on the other.

The Northern voice on "restructuring" may be what All Peoples Party pronounces it to be as a political party at the end of their present exercise. Majority of the States in the former Northern Region may prefer the "status quo" to any form of "restructuring".

There is a new voice however from the North – Friends of Democracy – which in a recent memorandum published in the news media recommended:

(a) A return to the 12 – state structure
(b) States must be economically viable and capable of relying on fiscal resources they generate themselves.
(c) Give states, powers to determine their internal structures such as the number of local governments.
(d) Ensure that states have full control of their resources, and pay taxes to the Federal Government what a refreshing VOICE!

A breath of fresh air. May it blow more strongly!

WHAT DOES FEDERALISM MEAN?

One of the leading British authorities on constitutional law in the last century, Prof. Kenneth C. Wheare, defines it as follows:

> **"Federal Government consists in a division of the functions of government between an independent common authority for the whole country and independent authorities for the constituent parts of the country"**.

And as Prof. Ben Nwabueze puts it in his book: "Constitutional Democracy in Africa":

> **"Federalism is an arrangement whereby governmental powers within a country are shared between a national, country-wide government and a number of regional (i.e. territorially localized) governments, all equal in status as governments in such a way that each of the national and regional governments exists separately and independently from the others and operate directly on persons and property within the territorial area of its jurisdiction, with a will of its own and its own apparatus of the conduct of its affairs, and with an authority in some matters exclusive of all the others"[3].**

The two authorities define "federal government" or "federalism" as consisting of the following elements:

1. Two governments, one for the whole "country" or "country-wide", and the other described as "independent authorities for the constituent parts" or "territorially localized" governments.

2. Division of "functions of government" between them, or shared governmental powers between them.
   This refers to Legislative Lists between the two governments as in our constitution.

3. The two authorities or governments are independent of each other.

***<u>WHAT DOES "RESTRUCTURING" MEAN</u>*?**

I see "***restructuring***" in three senses:

1. The number of the federating states (or units) in the Federation. How many federating units should there be in the federation, given their history, culture and economic resources.

3. Constitutional Democracy in Africa, volume 4 at p. 201.

2. What powers or functions should be vested in the Federal Government in the Exclusive Legislative List?

   And what functions should be in the Concurrent Legislative List?
   Residual powers will always be retained by the States.

3. Resource Control as in the United States of America, or 50% of mining royalties and rents payable to region or state of origin as in the 1960 and 1963 constitutions.
   What constitutes the Federation Account?
   And what should be the sharing formula in the operation of the Federation Account between the Federal Government and the States.

   Should there be a "Federation Account" as in the 1999 constitution, or Consolidated Revenue Fund as in the 1960 and 1963 constitutions?

POLITICAL DIVISION OF NIGERIA SINCE 1861

Let us first examine at a glance the history of British administration in Nigeria from 3 separate colonies to a federation of 4 federating units, in 1960 or 5 in 1963, and from 12 states in 1967 to 36 states today.

The earliest British administration in Nigeria was established in the Colony of Lagos, following the Treaty of Cession in 1861. Lagos Colony shared the same boundaries as Lagos State today. Two other colonies were established on 1st January 1900 with the Proclamation of Northern Protectorate and Fredrick Lugard as High Commissioner, and the Protectorate of Southern Nigeria. In 1906 however, Lagos Colony was merged with the Protectorate of Southern Nigeria, to become The Colony and Protectorate of Southern Nigeria, with Sir Walter Egerton as the High Commissioner.

On 1st January 1914, the Colony of Lagos and the Protectorate of Southern Nigeria were amalgamated with the Protectorate of Northern Nigeria. Inspite of the 1914 amalgamation however, the Protectorate of Northern Nigeria was ruled by the British under a system of Indirect Rule. To all intents and purposes,

the emirs continued to rule their subjects and administer justice under Native Authority; the British were behind the curtain occasionally pulling the strings.

The pattern of separate administration between the North and the South continued, each with its own Lieutenant Governor until after the Second World War. While "Indirect Rule" held sway in the Northern Protectorate, Sir Hugh Clifford under the Clifford Constitution in 1923 set up a Legislative Council for the Colony and Protectorate of Southern Nigeria, with three elected members from Lagos, one elected from Calabar (by property franchise), some senior colonial officials and a few other members nominated by the Governor.

Sir Arthur Richards launched his own constitution in 1946, with three regions, each headed by a Chief Commissioner. Northern Protectorate became Northern Region, and the Southern Protectorate was split into two : Western Region with its capital at Ibadan, and Eastern Region with Enugu as the capital. Kaduna remained the capital of Northern Region. Lagos Colony remained a separate administrative entity under the Commissioner for the Colony and his deputy.
The Legislative Council which was set up under the Richard's constitution, for the first time brought the North, West, East and Lagos together under the same roof. Besides the senior British officials, the Legislative Council had five nominated members from each region, three elected members from Lagos and one elected member from Calabar.

The Richards Constitution gave way in 1951 to a new constitution by Sir John Macpherson, following the Ibadan Conference in 1950. For the first time at Ibadan, political leaders from different parts of the country gathered together to have an input in constitution making for Nigeria.

It was at that conference that the first threat by a section of the country to secede was made. Alhaji Ahmadu Bello declared at the conference that if the Northern Region was not offered 50% representation in the new Legislative Council because of its 50% population, the Northern delegates would walk out of the conference, declaring that "the north was not prepared to repeat the mistake of 1914".

NIGERIA AS A FEDERATION

Before 1954, Nigeria was under the firm rule of the Imperial Power - Great Britain and Ireland. The three colonial possessions – Lagos Colony, the

Protectorate of Northern Nigeria and the Protectorate of Southern Nigeria – were ruled by Royal Proclamation or Orders – in – Council issued from London.

The Clifford Legislative Council (for the Colony and Southern Protectorate only in 1923), the Sir Arthur Richards later, (Lord Milverton) 1946 Legislative Council, and Sir John Macpherson's Legislative Council (1951 – 54) were "talking shops" - passing resolutions praying His (Her) Majesty to do one thing or the other for the country.

The Nigeria (Constitution) Order-in-Council, 1954 otherwise known as The Lyttleton Constitution (1954 – 1960) which established ***the federal system of government in Nigeria*** and the political developments which followed changed all that. Sir James Robertson was the Governor-General, and Mr. Oliver Lyttleton was the Secretary of State for the Colonies.

THE FEDERATING UNITS UNDER THE LYTTLETON CONSTITUTION:

1. *Northern Region (former Northern Protectorate),*
2. *Western Region,*
3. *Eastern Region,*
4. *British Cameroons,*
5. *Federal Territory of Lagos.*

As a federation (of five federating units or colonies), the Federal Government was assigned exclusive legislative powers over 43 items, to the exclusion of the federating units. There were 34 items in the Concurrent Legislative List under the Nigeria (Constitution) Order in Council, 1954.

Two other developments took place during the years 1954 - 1960. Both the Western and the Eastern Regions (August 1957) as well as the Northern Region (March 1959) were granted internal self government by the British Government. Besides the exercise of legislative powers by the respective Houses of Assembly, the Premiers presided over their cabinets and exercised full executive powers. The Central Executive Council had four nominated members from each Region along with some senior officials like the Chief Secretary to the Government, Financial Secretary, Director of Medical Services and Director of Education.

The other important development was the participation of all political leaders in Nigeria in the making of the Constitution of the Federation of Nigeria, 1960. The leaders were Alhaji Ahmadu Bello (Northern People's Congress and Premier of the Northern Regions), Dr. Nnamdi Azikiwe (National Council of Nigeria and the Cameroons and Premier of the Eastern Region), Chief Obafemi Awolowo (Action

Group and Premier of the Western Region), Malam Aminu Kano and Malam Ibrahim Imam (Northern Elements Progressive Union). Others were Dr. E.U. Udoma and Dr. Okoi Arikpo (United National Independence Party), Joseph Tarka and Mr. P. Dokotiri (United Middle Belt Congress), Mr. H.J.R. Biriye (Rivers) and others as observers.

THE NIGERIA CONSTITUTION ORDER – IN – COUNCIL, 1960

The Conference took place partly in London and partly in Lagos in 1957, 1958 and 1959. At the 1958 London Conference, the Action Group delegates and advisers (official and unofficial) were 33 in number out of well over 100 delegates overall. They included S.L. Akintola, S.O. Ighodaro, F.R.A. Williams, Ayo Rosiji, S.G. Ikokwu, L.J. Dosunmu, Remi Fani-Kayode and others

The delegates from N.P.C. included Alhaji Tafawa Balewa, Prime Minister, Alhaji Makama Bida, Isa Kaita Madawaki, Muhammadu Ribadu and Inuwa Wada. From the NCNC were T.O.S. Bension, S.E. Imoke, R.A. Njoku, M.I. Okpara, D.C. Osadebe, B.O. Olowofoyeku, Adegoke Adelabu, F.S. Okotie-Eboh, S. Onabamiro and A.M.F. Agbaje. The N.C.N.C delegates also included K.O. Mbadiwe and M.O. Ajegbo. It is important to highlight the participation of these acknowledged Nigerian political leaders from all parts of the country, and of different shades of opinion who shaped the 1960 and 1963 constitutions.

The 1957 Conference agreed to set up the Minorities Commission to alleviate the fears of minority groups or communities in various parts of Nigeria, under the chairmanship of Sir. Henry Willink.

The Commission received evidence from the minority communities in the Western Region (Edo, Urhobo, Igbo, Ijaw and Itshekiri all in Benin and Delta Provinces, later in Bendel State), Eastern Region (Ijaw, Kalabari, Ibibio, Efik, Annang, Ogoni all in Calabar, Ogoja and Rivers Provinces), and Northern Region (Ilorin and Kabba Provinces and also the Middle Belt).
The Commission made three basic findings which were accepted by the resumed conference in 1958. They were:

1. Creation of any new region would delay the grant of independence to Nigeria, already with three self governing regions.
2. The Commission recommended incorporation of fundamental human rights based on the United Nation Convention on Human Rights into the new constitution.
3. Establishment of minority areas.

Eventually, a Minority Commission was set up for the oil producing area in the Eastern Region.

Under the Constitution of the Federation of Nigeria, 1960, the federating units comprising Nigeria were reduced to four, following the referendum in the British Cameroons (a mandated territory under the United Nations Trusteeship Council) which led to the merger of the British and French Cameroons to become the Republic of the Cameroons.

The new federating units were:

1. Northern Nigeria
2. Western Nigeria
3. Eastern Nigeria
4. The Federal territory of Lagos.

See section 3 of the Constitution of the Federation of Nigeria, 1960.

The number of items in the Exclusive Legislative List had increased only by one item from 43 to 44 items, by the inclusion of "tribunals of inquiry".

By 1963, the combined forces of Northern Peoples Congress (N.P.C.) and National Council of Nigerian Citizens (N.C.N.C.) which formed the coalition Federal Government spearheaded the agitation for an eventual creation of Mid – Western Region out of the Western Region. In the same year, Nigeria became a Republic. The Constitution of the Federal Republic of Nigeria, 1963 was promulgated. Dr. Nnamdi Azikwe, the Governor-General of the Federation, became the President of the Federal Republic of Nigeria.

There was no basic change in the new Constitution compared with the 1960 constitution. Minor changes like substituting "President" for "Governor – General" featured in the republican constitution. Both the Exclusive Legislative List and the items in the Concurrent Legislative List increased by the addition of only one item each.

THE PROBLEM OF THE SIZE OF NORTHERN REGION AND THE CREATION OF 12 – STATE STRUCTURE

One of the principles of federalism is that no one state should be bigger than all the other states put together. The Northern Region was over twice the size of all the other regions put together in area or land mass. In population, it contained at least 50% of the nation's population. The demand by the Northern Region

delegates for 50% of the seats in the legislature in 1950 led to the following representation in the legislature under the 1951 constitution:

The House of Representatives originally consisted of 184 elected members:

i. 92 elected in the Northern Region.
ii 42 elected in the Western Region.
iii 42 elected in the Eastern Region.
iv. 6 elected in the Southern Cameroons.
v. 3 elected in Lagos.

After the Federal elections at the end of 1959, the House of Representatives was made up of:

174 elected in the Northern Region
62 elected in the Western Region
73 elected in the Eastern Region, and
3 elected members in Lagos.

The imbalance in the regional representation in the federal legislature, and the fear that power would reside permanently in one region to the disadvantage of some other parts of the country were critical issues occupying the political space in the 1960's which refused to go away.

Perhaps more important was the agitation by minority elements in the North for self determination. There was the Middle Belt insurgency which led to the intervention by the Nigeria Army before the armed revolt was put down before independence. There was agitation for self determination by non Hausa/Fulani population in Ilorin (mostly Yoruba) and Kabba (Igala, Ebira and Okun) Provinces, the NEPU – led "talakawas" especially in Kano Province, and the Kanuri people in Bornu Province led by Malam Ibrahim Imam.

Both the NCNC and the Action Group supported the agitation for creation of States in the Northern Region – NCNC was in alliance with Aminu Kano's NEPU in Kano, and Action Group in alliance with J.S. Tarka in the Middle Belt (Benue and Plateau provinces), and with Ibrahim Imam's Bornu League. Offa in Ilorin province was Action Group territory.

And lest we forget, there was agitation for Cross River (Calabar / Ogoja / Rivers) State, to be carved out of the Eastern Region, with the support of Action Group.

Besides the discovery of oil at Olubiri, the non-Ibo speaking "minority" in the Eastern Region were in the late 1950's complaining of "marginalization" which

led to the setting up of the Minorities Commission by the British Government, and subsequently the creation of Niger Delta Commission.

THE ARMY TOOK OVER POWER

The Nigeria Army took over power from the Balewa administration in January 1966. There was the counter coup in July 1966. The country was on the brink of civil war. In August 1966, Lt. Col. Yakubu Gowon who had assumed power as Head of State set up the Ad-Hoc Committee on Constitutional Proposals for Nigeria to rescue the country from disintegration.

There were five delegates and five advisers from each region. Lagos had two delegates and two advisers, one of whom was Femi Okunnu. Chief Obafemi Awolowo led the Western delegation. Other leaders of delegations were Chief Anthony Enahoro (Mid-West), Sir Kashim Ibrahim (North), Prof. Eni Njoku (East), and Prof. T. O. Elias (Lagos). The Northern delegation included Malam Aminu Kano and Joseph Tarka.

After weeks of deliberation on confederal system of government, and with only Mid-West and three – fourth of the Lagos delegation standing up for a federal system of government, the North broke the ice. In the presence of Malam Aminu Kano and Joseph Tarka, Sir Kashim Ibrahim (former Governor of the Northern Region) reading from a prepared speech on 16th September 1966 and speaking on behalf of the Northern delegation said :

> **"Some Nigerian Newspapers have carried news that the Northern Delegation, like the Eastern Delegation, is opposed to the creation of more states in Nigeria. This is completely untrue. Whereas the Eastern Delegation has no proposals about the creation of more states, the stand of my Delegation on this all-important subject is contained in our memorandum submitted to this conference. By way of amplification, I would like to point out most emphatically that the Northern Delegation stands in favour of creation of more states anywhere in Nigeria, if the majority of the people directly concerned express such a wish_ _ _"[4].**

Prof. T. O. Elias immediately rose to welcome and support the speech, adding;

> "**As you know the stand of Lagos, we being the statists (people who really want a Lagos State) we cannot deny the right of other areas of the country having their States...**"[5]

4. Verbatim Report of Ad Hoc Committee on Constitutional proposals for Nigeria. Friday, 16th September, 1966.
5. Verbatim Report of Ad Hoc Committee on Constitutional proposals for Nigeria. Friday, 16th September, 1966.

Again on 20th September, 1966, Sir Kashim Ibrahim on behalf of the Northern Delegation on the Ad Hoc Committee read out a prepared statement which stated in part:

> "**My delegation is convinced that Nigeria should not be allowed to disintegrate. No Nigerian has anything to gain on the long run if this nation disintegrates …… The existing Regions should be constituted into states with increased powers over their own affairs. Subjects which caused friction in the past should as far as possible be made the responsibility of each state……. In order to allay the fears of domination by sections of the country, the creation of states must be agreed……**"[6]

At a press conference on 26th January 1967, the Head of State Col. Yakubu Gowon stated that new states would be created "for those who want them" in accordance with the criteria laid down in his broadcast earlier in November. These were:

i. No one state should be in a position to dominate or control the central government;
ii. Each state should form one compact geographic area;
iii. Administrative convenience, the facts of history, and the wishes of the people concerned must be taken into account;
iv. Each state should be in a position to discharge effectively the functions allocated to regional governments.

Unlike Dr. Nnamdi Azikiwe who suggested the creation of eight states in 1949/50, the Federal Government stated that it would welcome eight to fourteen states in the federation.

Chief Awolowo in his "Thoughts on Nigerian Constitution" advocated the creation of eleven states on "linguistic formula" (including Lagos State), and seven states "where no linguistic group will be big enough to dominate the others".

Agitation for creation of states was relentless from the inauguration of the Ad Hoc Committee, until May 1967 when the states were created. Memoranda were submitted by several Nigerians including E.O. Eyo and S.J. Umoren on behalf of the people of Calabar Province, I.I. Murphy and P.O. Ojua (Ogoja) and Wenike Briggs (Rivers).

6. Verbatim Report of Ad Hoc Committee on Constitutional proposals for Nigeria. 20th September, 1966.

Isaac Boro led a guerella warfare for the creation of Rivers State in the early 1960's and later joined the federal forces during the civil war against Biafra.

The Tiv and Idoma in the Middle Belt were assured of their own state having taken up arms for a separate region from the North before independence.

There was agitation also for self determination in the other half of the Middle Belt: Ilorin and Kabba provinces. NEPU retained its stranglehold on Kano Province against the Northern "oligarchy".

The new military authorities allowed "Leaders of Thought" conferences to hold in several parts of the country from August 1966, except in the Eastern Region under Colonel Odumogwu Ojukwu as Governor, already in rebellion against the federal authorities.

In his autobiography,[7] Sir Udo Udoma while serving as the Chief Justice of Uganda on secondment from Nigeria received Colonel Ojukwu's emissaries led by Prof. Chike Obi to canvas for his support for a confederal Nigeria. Sir Udo was the pre-independence leader of the COR (Calabar/Ogoja/Rivers) State Movement.
"Later", in his words:

> "I received from Colonel Yakubu Gowon through Dr. Okoi Arikpo, who was then External Affairs Minister in Colonel Yakubu Gowon's newly constituted federal cabinet, an enquiry as to whether as a leader of the COR State Movement I would insist that the whole area embracing Calabar, Ogoja and Rivers provinces (COR for short) should be carved out as a new state in the Eastern Region of Nigeria, as Colonel Yakubu Gowon was determined to create states in all regions of Nigeria. In reply I advised that it had secretly been agreed by all supporters of the COR State Movement that when states were to be created that the Rivers province should be created a separate state by itself while Calabar and the four divisions of Ogoja, Obudu, Obubra and Ikom in Ogoja province should also be together created a

separate state – in other words, that there should be two separate states to be created out of the COR State area. Thereafter to my delight, I received information from home in Nigeria that the Rivers

7. The Eagle in its flight (Being The Memoir of The Hon. Udo Udoma, CFR published by Grace and son 2008.

province had been created a separate state by the name of Rivers state while Calabar province together with the four divisions of Ogoja, Obudu, Obubra and Ikom in Ogoja province had also by common consent of the people been created a separate state under the name of South Eastern state to the joy of the people. All together, Colonel Gowon created 12 states throughout Nigeria on 27th March 1967. Thus Nigeria became a federation of States, no longer a federation of regions".

The rest is history.

FEDERATION OF TWELVE STATES

After some extensive consultations with leaders of opinion, a 12 – State structure was agreed by the military government. On 27th May 1967, the Head of State, Colonel Yakubu Gown, announced the creation of 12 States, 6 from the Northern Region and 6 from the South, as follows :

1. North East
2. North West
3. Kano
4. Kwara
5. Benue – Plateau
6. North Central
7. Western State
8. East Central State
9. Lagos.
10. Mid – Western (Bendel) State
11. Rivers
12. South East.

I must admit that the 12 state structures is my ideal structural division for the Federal Republic of Nigeria. It remains the best today on all counts.
It completely eliminated the fear of domination of the whole country by the Northern Region because of its size in area and in population.

It also addressed the agitation of the minority communities for states of their own: Kwara, North East, North Central, Benue-Plateau, Lagos, Rivers, South East.

It restored the old Western Region, shorn of Mid-West or Bendel State and the Colony Province which was annexed to the region in 1951. Most Yoruba speaking Nigerians were in the Western State. Call it Oduduwa State, or what you will!

Besides Western State, Kano and East Central States were by population Hausas and Igbos respectively: the same culture and language; homogenous. The other states were multinational in population but who had been in the same political divisions or provinces for many years before and after independence. Besides, no one ethnic group was large enough to dominate all the others within each state.

The United Middle Belt Movement Congress which went to war on the eve of independence had its Benue Plateau State. So did the other half of the Middle Belt Movement, mostly Yoruba speaking, with another state : Kwara State.

And finally the Calabar – Ogoja – Rivers (COR) Movement, the oil producing area which mounted sustained agitation for a separate region for the minorities in the East also had its own states : Rivers and South Eastern States.

It was the agitation by these "**minorities**" for separate regions which almost delayed the grant of independence by the United Kingdom. The establishment of the Minorities Commission at the London Conference in 1957 did not satisfy their demand for separate regions.

The North East State met the demand of the Kanuri people who claimed never to have been conquered by the Fulani.

The 12 - state structure was the perfect photo – fit for Nigeria: 3 states (Western State, Bendel State, Lagos State with the return of the old colony province to Lagos) from the former Western Region, and 3 states (East Central State, Rivers State and South East) from the Eastern Region.

The new 12 states replaced the 4 regions and Lagos Federal territory as the federating units under the Constitution of the Federal Republic of Nigeria, 1963 with the city of Lagos as both the federal capital and the capital of Lagos State.

The 12 – state structure not only satisfied all the demands of the "minority" communities separate regions of the London Constitutional Conference in 1957

and 1959. It was well received by the political class and the generality of Nigerians.

Chief Awolowo accepted the post of Federal Commissioner for Finance and vice chairman of the Federal Execution Council which included Malam Aminu Kano (NEPU), J.S. Tarka (Middle Belt), Tony Enahoro and Wenike Briggs from Rivers. Ali Mongunro, Yaya Gusau and Shehu Shagari (later President of the Republic) – all three former members of the Northern People's Congress served also as Federal Commissioners between 1967 and 1974/5 in the Government of General Yakubu Gowon. So did Okoi Arikpo of Calaba/Ogoja/Rivers State or COR State Movement. Dr. J.O. Okezie joined the cabinet after the war in 1970.

FROM 12 TO 19 & 30 – 36 STATE STRUCTURE

General Muritala Muhammed on 3rd February 1976 by decree[8] increased the number of States from 12 to 19 by the creation of Sokoto and Niger States (North West), Borno, Gongola and Bauchi States (North East), Benue and Plateau States (Benue – Plateau), Oyo, Ogun and Ondo States (Western State), Anambra and Imo States (East Central State). There was no rationale for the break-up of Western State or East Central State. It became the fashion for military rulers in order to gain perceived popular support from the public to create new states after staging a military coup d'etat. There was no demand from or consultation with the people directly affected by the new changes between July 29th 1975 when he assumed power and 3rd February 1976 when the new states were created.

General Ibrahim Babangida, like General Muritala Muhammed, before him, increased the number of States from 19 to 30 States during his presidency: Katsina and Kaduna (North Central), Akwa Ibom and Cross River (South East), were created in 1987. Later, in 1991, he created Adamawa and Taraba (Gongola), Edo and Delta (Bendel). Abia and Enugu states were created. Jigawa (out of Kano), Yobe (out of Borno). Kebbi (out of Sokoto) and Osun (out of Oyo) were also created. Kogi State increased the number of states from 19 to 30 during the military rule of General Babangida.

There was no popular demand for the creation of these states other than the desire to stay in power.

General Abacha added 6 more states to get us to where we are today : 36 States. The new states were Ebonyi, Bayelsa, Nasarawa, Zamfara, Gombe and Ekiti (out of Ondo). That was in 1996 when he wanted to transform into the "Maximum Leader".

There is no record of any petition presented to Muritala Muhammed praying him to break-up the Western State or the East Central State. Ndigbo and Yoruba nation or Afenifere must now rue the day of the break-up of Western State and Eastern Central State. There was no evidence of popular demand either for the break-up of North East, North West and Benue-Plateau states.

8. States (Creation and Transitional Provisions) Decree or Decree No. 12 of 1976.

General Ibrahim Babangida in a similar fashion also took out his carving knife to carve out 11 more states while denying them all revenue to sustain the state governments. Sanni Abacha added 6 more states, to swallow in penury, no defined source of revenue – the death knell of fiscal federalism.

Meanwhile, all the Heads of States, army and civilian, since 1979 (Shehu Shagari, Muhammadu Buhari, Ibrahim Babangida, Sanni Abacha, AbdulSalam, Olusegun Obasanjo, Musa Yar'Adua, Goodluck Jonathan and Muhammadu Buhari) denied the Governors direct sources of revenue to govern their States. The Federal Government exercised full control and management of the ***Federation Account*** as prescribed by the 1979 and 1999 constitutions. President Shagari did not create any new state; he only operated under the 1979 constitution.

REVENUE ALLOCATION

Under the 1960 and 1963 Constitutions, 50% of mining royalties, including mineral oil and mining rents were paid to the regions of origin, 30% was paid into the Distributive Pool Account, and 20% was retained by the Federal Government for its services.

Section 140 (1) of the 1963 Constitution of the Federation[9] stipulated as follows:

> "There shall be paid by the federation to each Region a sum equal to fifty percent of
>
> (a) the proceeds of any royalty received by the Federation in respect of any mineral extracted in that Region; and
>
> (b) any mining rents derived by the Federation from within that Region

Section 140 (2) of the 1963 Constitution also provided for 30% of the mining royalties and rents to be paid into the distributive pool and 20% to be retained by the Federal Government. The table read:

1. State of origin - 50%
2. Distributive Pool - 30%

3. Federal Government - 20%

The Distributable Pool Account which included import and export duties as well as excise duties on some named commodities was distributed among the states under section 141 of the 1963 constitution as follows:

9. For full details of Cap. ix on FINANCE in The Constitution of the Federation 1963, see Appendix 1 to this Treatise.

a) to Northern Nigeria 40%
b) to Eastern Nigeria 31%
c) to Western Nigeria 24%
d) to Mid-Western Nigeria 6%

It is important to put on record that the foregoing revenue formulae were the key recommendations of the two-man Fiscal Commission set up by the London Constitutional Conference on 10th October 1957. The chairman was Sir Jeremy Raisman, former Financial Adviser to the Government of India, and the other member was Professor R.C. Tress.

The terms of reference were to examine and recommend suitable revenue allocation formulae for independent Nigeria and also the problems of taxation.

The resumed Constitutional Conference in 1958 considered and accepted the recommendations of the Fiscal Commission which were later incorporated into the Constitution of the Federation, 1960 as well as the Constitution of the Federal Republic of Nigeria, 1963.

The 1979 Constitution abolished all that. It abolished all sources of direct funding of the states as set out in the constitution and left them at the mercy of the Federal Government.

Section 149(1) of the 1979 Constitution stated that "the Federation shall maintain a special account called the Federation Account" into which "all revenues collected by the Government of the Federation" shall be paid, with the exemption of personal income tax of the armed forces.

> (2) Any amount standing to the credit of the Federation account shall be distributed among the Federation ….. on such terms and in such manner as may be prescribed by the National Assembly".

The section further provided that the ***Federation Account*** would be distributed "among the Federal and State and local governments on such terms and in such manner as may be prescribed by the National Assembly"

The foregoing provision in the 1979 constitution was abandoned and replaced by section 162 of the 1999 constitution[10] which states:

10. See section 149 of the 1979 Constitution of the Federal Republic of Nigeria and section 162 of the 1999 Constitution of the Federal Republic of Nigeria.

> 162 "(1) The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenue collected by the Government of the Federation.
>
> 162 (2) The President, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before The National Assembly proposals for revenue allocation….."

Section 149 of the Constitution of the Federal Republic of Nigeria 1979, repeated in section 162 of the 1999 Constitution, signaled the death knell of fiscal federalism in Nigeria.

The 1979 Constitution put an end to the principle of payment as of right of "50% derivation from royalties and mining rents to the Region of origin" entirety.

Section 149(1) of the 1979 Constitution established "the Federation Account" into which shall be paid all revenues collected by the Government of the "Federation", except income tax of members of the armed forces and the police.

Under section 149(2), "any amount standing to the credit of the Federation Account shall be distributed among the Federal and State governments and the local government councils in each state in such manner as may be prescribed by the "National Assembly".

The 1999 Constitution concedes 13% of the Federation Account instead of 50% derivation to the state of origin under the 1963 constitution. It is no longer an allocation of 50% as of right for a State to enjoy just half of its natural resources. It has been reduced arbitrarily to 13%, notwithstanding the devastation of the environment by the exploitation of the oil resources of the state of origin. In the United States of America, the states of origin take all – 100% of the profits derived from exploitation of any resources in any state.

But that is not all. It is the President of the Republic who, on the advice of the Revenue Mobilization Allocation and Fiscal Commission, takes proposals for allocation of revenue in the Federation Account to the National Assembly for its final decision. State Government are entirely excluded from this exercise.

It is the National Assembly which decides how much of the Federation account is to be allocated to the states "on the basis of population, population density, equality of states and land mass". The state of origin takes only 13% to compensate for its natural wealth taken away, to feed the Federal Government, the fat cat!

The Public Revenue as contained in the 1999 Constitution has nothing to do with "federalism". Whatever the National Assembly decides to allocate to the states is on the basis of "take it or leave it". It is a unitary form of government that we have been running in Nigeria since 1979 without any shadow of doubt.

In one fell swoop, the 1979 Constitution destroyed fiscal federalism on which the Federal Republic of Nigeria was founded by the founding fathers in 1960 and 1963 and built upon by General Gowon and to some extent followed by the Muritala / Obasanjo Regime.

That is why our Governors spend most of their time at Abuja, with begging bowls in hand, to collect their allocation of funds to run their state governments.

Could one imagine the Sadauna of Sokoto, Chief Obafemi Awolowo, Dr. Michael Okpara or Chief Dennis Osadebe hanging around Sir Tafawa Balewa's Prime Minister's office in Lagos to collect "monthly allocation" of funds to run their regional governments?

LOCAL GOVERNMENT NOT A TIER OF GOVERNMENT

The 1979 constitution not only abolished fiscal federalism, it also upgraded local government as a third tier of government.

The Little Oxford Dictionary defines federation as "a group of states under a central authority in which individual states keep control of their internal affairs". Local Governments were "*internal affairs*" of each region or state and of no concern of the Federal Government until 1975 when Gen. Muritad, "a uniform system of local governments" throughout Nigeria. The Northern Nigeria system of local government was the preferred option and given constitutional

recognition in 1979 almost independent of the state governments. They have since 1979 been elevated almost to the status of “federating units”.

Save for section 7 of the 1979 constitution as well as section 7 of the present 1999 constitution which guarantees the existence of democratically elected local government (as opposed to nominated councils) under a law by a State House of Assembly, all references to local government in the constitution must be expunged.

Local government is alien to all federal constitutions in the world. They do not feature in the constitutions of federal government in any part of the world – U.S.A., India, Australia, Russia, Germany, South Africa and Canada, for example.

They were also foreign to Nigeria’s 1954, 1960 and 1963 federal constitutions. Before 1976, local administration remained purely as internal political units within each of the British colonies in Nigeria before and also after independence.

The Constitution of the Federal Republic of Nigeria, 1963[11(i)] is in five parts : Constitution of the Federation, and the constitution of each of the four regions.

The Constitution of Federation[(ii)] made no reference whatsoever to “local government”, a matter or function exclusive to the regional governments.

Section 74 of the Constitution of the Northern Nigeria 1963[(iii)] made provision for the establishment of Provincial Administrations, otherwise known as local governments.

Similar provisions were made in section 77 of the Constitution of Eastern Nigeria[(iv)], section 73 of the Constitution of Western Nigeria[(v)], and the section 72 of the Constitution of Mid-Western Nigeria[(vi)].

Lagos had its Town (City) Councils as well as its Mayor (Dr. Ibikunle Olorunnimbe). The Northern Protectorate/Region had its system of Native Authority. Western Region had its Oba-in-Council. The British administration introduced “warrant chiefs” in the Eastern Region, to be replaced by Dr. Okpara with British county council system of local government. Each Region mixed its culture with modernity. Let it be.

Uniform local government system for Nigeria has failed. Let each state operate its local government system according to its custom, as long as the councils are democratically elected under a law by the State House of Assembly as in ancient

times, and before the uniform Local Government Edict was introduced by the Muritala / Obasanjo regime in 1977 when the same draft Local Government Edict was given to each state Governor to enact as his local government edict, 1977.

11 (i) The Constitution of the Federal Republic of Nigeria, 1963 pp. 1 – 237
(ii) The Constitution of the Federation, pp. 1 – 81
(iii) The Constitution of Northern Nigeria, pp 83 – 117. See, section 74 at pp. 114
(iv) The Constitution of Eastern Nigeria, pp 119 – 156. See, section 77 at pp. 153 - 154
(iv) The Constitution of Western Nigeria, pp 157 – 199. See, section 73 at pp. 195
(v) The Constitution of Mid-Western Nigeria, pp 201 – 237. See, section 72 at pp. 232

Federal Government has since 1979 hijacked "local government" as if it were in the Concurrent Legislative List.

The National Assembly has no power to make laws on "local government" – Section 7 of the Constitution has made it very clear that only a State House of Assembly has power to make "a Law which provides for the establishment, structure, composition, finance and functions" of local councils as it was before British occupation of Nigeria.

Besides section 7 of the 1999 Constitution, all references to **Local Government** in the constitution should be expunged. This includes the First Schedule, Part 1 to the Constitution which purports to describe the geographical area of each State by the number of local governments in the state, instead of properly surveyed co-ordinates as of old, Survey co-ordinates define land boundaries.

You do not define Canada by the number of provinces or the United States by the number of its states. In the same way, you do not describe or define Nigeria by its 36 states, let alone by the number of local governments artificially described or defined.

"Local Government" is a residual matter or function. It is for state Governments alone to determine its establishment and structure and its composition, finance and functions.

Let it be.

THE LEGISLATIVE LISTS

Let us now examine the legislative functions assigned exclusively to the Government of the Federal Republic of Nigeria, functions over which only the Federal Government can exercise legislative and executive powers : *the Exclusive Legislative List*.

We must also examine those functions or items in the Concurrent *Legislative List* over which both the Federal Government and the States, the federating units, can exercise legislative and executive powers.

Finally, we can consider the *residual functions* of government. These are functions over which only the States – the federating units – can exercise legislative and executive powers, to the exclusion of the Federal Government.
Residual powers are all other items or functions not included in the Exclusive Legislative List.
See,

1. Section 69 (5) of the 1963 constitution.
2. Section 7 (a) of the 1979 constitution.
3. Section 4 (7) (a) of the 1999 constitution.

We can then determine to what extent the Federal Government has weakened the federal structure of Nigeria and eroded the principle of federalism.

EXCLUSIVE LEGISLATIVE LIST

The Nigeria (Constitution) Order in Council, 1954 contained 43 items or functions in its Exclusive Legislative List and 34 items in the Concurrent Legislative List. That was the foundation of the federal system of government in Nigeria.

The Constitution of the Federation, 1960 contained 44 items in the Exclusive Legislative List, and only 28 items in the Concurrent Legislative List.

The number of items in the Exclusive Legislative List went up to 45 in the Constitution of the Federal Republic of Nigeria, 1963, and 29 items in the Concurrent Legislative List.

The Exclusive Legislative List ballooned from 45 to 66 items in the Constitution of the Federal Republic of Nigeria, 1979, whilst the Concurrent Legislative came down to 28 items.

Incidentally, the Constitution Drafting Committee, at pages 163 – 166 of its Report (Part 11) submitted to the Federal Government in 1976 recommended as follows. : "It was decided that there will be *one list, an Exclusive Federal Legislative List, with the states having residual powers. Unlike the 1963 constitution, there is no concurrent list"*[12].

That recommendation was not accepted by the Government.

What might have been ?

Some of the new items in the Exclusive Legislative List in the 1979 constitution were in the Concurrent Legislative List in the 1963 constitution. The items should, in my view, have remained on the Concurrent Legislative List.

12. Reports of the Constitution Drafting Committee, volume II published in 1976 by Federal Ministry of Information, Printing Division, Lagos.

These included :

i . Bankruptcy and insolvency.
ii. Census including……registration of births and deaths.
iii. Labour, and
iv. National Parks.

What has the Federal Government got to do with "registration of births and deaths" – a matter for local governments in earlier years !

New items in the 1979 Exclusive Legislative List included :

i. Police,
ii. Prison,
iii. Stamp Duties,
iv. Trade and Commerce and
v. Regulation of political parties.

The Constitution of the Federal Republic of Nigeria, 1999 added only two more items to the Exclusive Legislative List to bring it up to 68. And the Concurrent Legislative List also increased by 2 items – to 30 items.

POLITICAL PARTIES

"Regulation of political parties" should, in my view, be expunged from the constitution.

"Let a thousand flowers bloom. Let a thousand thoughts contend", said Mao tse Tung.

Nigerian National Democratic Party (NNDP) was founded by Herbert Macaulay and others[13] in 1922, followed closely by *People's Union* of J. K Randle, Orisadipe Obasa, Kitoyi Ajasa, R. Akinwande Savage, Adeyemo Alakija and others[14]. There were *Nigerian Youth Movement* (1933), *National Council of Nigeria and the Cameroons* or NCNC (1944), *Action Group* (1951), *Northern People's Congress* (1951). Chike Obi's *Dynamic Party* (1951), Aminu Kano's *Northern Elements*

Progressive Party and several others which were very active during the years Nigeria was under British colonial bondage. They fought for our independence.

These parties and others from 1923 till 1965 contested all Legislative Council, municipal and other elections without being registered or regulated by Great Britain the colonial power.

13 Other members were Dr. C.C. Adeniyi-Jones, Egerton Shyngle, Thomas Horatio Jackson, Karimu Kotun, J.T. White, and J.T. Caulcrick

14 The Development of Political Parties in Nigeria by Nnamdi Azikiwe, 1957.

Dr. Nnamdi Azikiwe (NCNC), Chief Obafemi Awolowo (A.G), and Alhaji Ahmadu Bello (NPC) became Premiers (1956 – 1959). And Alhaji Abubakar Tafawa Balewa (NPC) became Prime Minister in 1960.

If all these and several other political parties were not registered or regulated by Royal ordinances or orders – in – council of the Imperial Power, why should free and independent Nigeria today force political parties to be registered and be under intense regulation before they can contest elections. ?

Unlike all other federal constitutions in the world, "political parties" first appeared in sections 201 – 209 of the Federal Republic of Nigeria, 1979, and later in sections 221 -229 of the 1999 constitution.

Section 221 states :

> "No association other than a political party shall canvas for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election"

Nigeria occupies a unique position in the world. It is the only country where only registered political parties and no other associations or persons can stand or contest for elections as candidates, or canvas for votes at any election – national, state or local government. And Nigeria is the only country in the world where the electors vote for registered political parties at elections, not human beings. Only political parties appear on the ballot papers, not names of human beings or persons as candidates.

The constitution sets out the following as conditions for registration:

(i) certain restrictions on formation of political parties;
(ii) need for constitution and rules of political parties;
(iii) membership of principal officers and executive members of political parties must reflect the "federal character of Nigeria;

(iv) aims and objects must be stated;
(v) regulation of the finances of the parties;
(vi) annual report on finances of the parties must be submitted to the Independent National Electoral Commission which must submit an annual report to the National Assembly, among other restrictions.

Why this regimentation in Nigeria ? Why is Nigeria special ?

Let a thousand political parties bloom without state interference. Let a thousand thoughts contend without the Big Brother !

The sad truth today is that Nigeria is the only country in the world where the electors vote for *political parties* at elections - national, state or local government.

The novelty has diminished the electoral process and encouraged fraud. Candidates who were disqualified by their political parties and who did not take part in canvassing for votes on behalf of their political parties have been declared as duly elected as Governors by the Supreme Court on purely technical grounds !

INDEPENDENT CANDIDATES

Independent spirit is denied the right to be voted for at elections. We must bring back (as it was before the 1979 constitution) *independent candidates* to enjoy the fundamental human right to contest elections and to be voted for. Let the voter have the right to choose, not a political party, but the person or human being to represent the voter in the National Assembly, State House of Assembly or in the local government council.

FEDERAL REVENUE

The powers of the Federal Government have increased since 1979, are increasing, and ought to diminish, to paraphrase the pronouncement of a notable British politician on the powers of the monarchy.

We must roll back this huge grab for power by the central government. 1979 has been a watershed in the constitutional history of Nigeria. And General Obasanjo was at the centre of it all.

It was the time when "local government" was weaned from the States and the local government system of Northern Nigeria was made uniform throughout Nigeria. Local government has become impotent throughout the country since 1979 it has become a toothless bull dog.

It was the year when a fair and just revenue allocation formula designed for a federal system of government which had served the country well since independence was abandoned. The system which allowed the region or state of origin to enjoy 50% of the royalties and rents derived from its natural wealth, but which later saw the allocation reduced to zero.

The National Assembly now decides what formula would be adopted for revenue allocation at any given time, on the advice of the Revenue Mobilization Allocation and Fiscal Commission, the membership of which is heavily weighted against the oil producing states.

The formula under the 1979 constitution compared with 1960 & 63 constitutions' are as follows :

	1979	***1960 & 1963***
State of Origin	*– Nil*	*(50%)*
Distributive Pool	*– Nil*	*(30%)*
Federal Government	*– Nil*	*(20%)*

There was no allocation to states of origin. National Assembly decided at any given time what would be allocated to the Federal Government, the States and to the local governments.

The recommendation of the Constitution Drafting Committee to the Constitution Assembly was to continue the 1963 formula "until a new allocation formula is worked out"[15].

Under section 162 (2) of the 1999 constitution which allows 13% of the Federation Account to be allocated to the state of origin, the National Assembly upon presentation by the President decides what to allocate to the Federal Government, to the States and to local governments. The states, the federating units, have no say in the matter. The National Assembly decides what to dole out to the states to run their services under our federal system of government. The State Governments rely only on whatever revenue that can be internally generated. The bulk of their budgets is largely whatever the Federal Government doles out to them.

State revenue must be separated from Federal Revenue as in the 1960 and 1963 constitutions.

15. See page 157 of the Report of the Constitution Drafting Committee. 1976 ibid. op cit

The Formula at present under the 1999 Constitution as compared with the 1960 and 1963 formula is as follows :

		1999	***1960 & 1963***
1.	*State of Origin*	*13%*	*(50%)*
2.	*Distributive Pool*	*30%*	*(30%)*
3.	*Federal Government*	*52%*	*(20%)*
4.	*Ecology.*		

Federal Revenue under our present constitution means "*any income or return accruing to or derived by the Government of the Federation*".

One of the hallmarks of federalism is that the Federal Government on the one hand and the State Governments on the other must be independent of each *other.*

There is now no room for fiscal federalism in our constitution.

That is not all.

INVASION OF STATE FUNCTIONS BY FEDERAL GOVERNMENT

The Federal Government has acquired or taken over some of the residuary or reserved powers of the States against the letter and the spirit of the constitution:

1. *Primary Education.*
   Army/Navy/Air Force primary schools.
   Primary Education Fund.

2. *Primary and Secondary Health.*
   Federal Government has invaded the health sector, an exclusive preserve of the states by, for example, the enactment of National Health Act, 2014 which seeks to establish National Health System for Nigeria.
   Part 1 (2) of the Act states :

   "The National Health System shall include :

   a. the Federal Ministry of Health.

b. the Ministry of Health in every State and the Federal Capital
c. parastatals under the Federal and State ministries of health.
d. all local government health authorities.
e. the ward health authorities.
f. the village health committees.
g. the private health care providers.
h. traditional health care providers, and
i. alternative health care providers.

Never in the colonial history of Nigeria under British rule was there an order –in – Council or Imperial ordinance which assembled all such bodies or authorities in one legislation or Order – in – Council, not even in the years before the federal system was introduced (1954).

The National Health Act 2014 is illegal, unconstitutional and of no legal effect. Health as a function of government is not on the Exclusive Legislative List. It is a residuary matter, reserved exclusively for the states.

3. *Lands.*
   Establishment of Federal Lands Registries in the States is unconstitutional and therefore illegal as management and administration or regulation of land is a residual function. Federal State land in any State must be registered in the land registry of the state. That was the practice until General Babangida created federal lands registries in Lagos and some other state capitals.[16]

4. *Housing.*
   Federal Housing Schemes in the states are unconstitutional, but not housing finance. Federal Mortgage Bank is within the law.

5. *Physical Planning/Town Planning.*
   Residuary power.

6. *Water Supply and Sanitation.*
   Residuary .

Water Supply ?

And "Sanitation services" on the exclusive or even concurrent legislative list ?

Recently, the Minister of Water Resources was reported in the media to have said:

> ***"The Constitution allowed the issue of water supply and sanitation services to be handled by the three tiers of governments adding that pursuant to this, the Federal Executive Council and the National Economic Council approved the National Water Supply and Sanitation Policy in 2000".***

And which constitution was the minister referring to in his statement because "water and sanitation services" were issues for local authorities or local government councils in the years of yore! The only area where the National Assembly can intervene is on item 64 on the Exclusive Legislative List which states :

16. In a landmark judgment by the Supreme Court in the **Attorney General of the Federation v. Attorney General of Lagos State**, the Court held that the interest of the Federal Government in any federal property has become extinct once the property is sold to a third party. It ceases to be **federal state land**. Subsequent transactions can follow in the state land registry where the land is situate.

> ***"Water from such sources as may be declared by the National Assembly to be sources affecting more than one state".***

The Federal Government at the Supreme Court recently challenged the authority of Lagos State Government to levy taxes on operators of hotels and similar tourist organizations.

The Supreme Court upheld the right of the Lagos State Government to levy such taxes. The Court held further that the power of the Federal Government was "*to regulate tourist traffic*" and no more.

Another area of controversy between states and Federal Government is regulation of inland waterways within Lagos State. In a recent case before the Court of Appeal, the Court held that the National Inland Waterways Authority had no power to regulate State waterways.

There are several other residual functions which the Federal Government has appropriated to itself without any challenge by the States. It is only in the Federal Capital, Abuja that the Federal Government can exercise residual powers under our constitution.

THE JUDICIARY : APPOINTMENT, DISCIPLINE AND REMOVAL OF JUDGES OF STATE HIGH COURTS

The 1999 constitution has introduced a unified judiciary into our federal system of government, unlike the previous constitutions.

Under the 1960 and 1963 constitutions of each region, appointment of the Chief Justice and the Judges of the High Court of the region was by the Governor of the region, acting on the advice of the Premier.

The judges of the High Court of the Region could be removed from office by the Governor, upon an address by 2/3 of the membership of the State House of Assembly "for inability to discharge the functions of his office arising from infirmity of mind or body …… or for misbehaviour".

The Chief Judge of the High Court of a State under the 1979 constitution however was appointed by the Governor of the State "on the advice of the State Judicial Service Commission subject to the approval of such appointment by a simple majority of the House of Assembly of the State".
See, section 235 (1) of the constitution.

> "The appointment of a Judge of the High Court of a State shall be made by the Governor of the State acting on the recommendation of the State Judicial Service Commission".

See, section 235 (2) of the 1979 constitution.

The removal of the Chief Judge of a State and Judges of the State High Court shall be by the State Governor acting on an address supported by two – thirds majority of the State House of Assembly.

In the case of State High Court Judges, they can only be removed by the Governor on the advice of the Judicial Service Commission of the State on grounds similar to the provisions contained in the 1963 constitution.

The 1999 Constitution however changed all that. It gave Nigeria a judiciary fit for a unitary system of government with some federal features.

Under section 271 (1) of the Constitution of the Federal Republic of Nigeria 1999, appointment of the Chief Judge of a State "shall be made by the Governor of the State *on the recommendation of the National Judicial Council* subject to confirmation of the appointment by the House of Assembly of the State".

Judges of the High Court of a State shall be appointed by the Governor *acting on the recommendation of the National Judicial Council.*

Removal of the Chief Judge of a State, "shall be by the Governor of the State acting on an address supported by two-thirds majority of the House of Assembly of the State".

See, section 292 (1) (a) (ii) of the 1999 constitution.

And removal of a judge of a State High Court shall however be by the Governor "acting on the recommendation of the National Judicial Council……"

See, section 292 (1)(b) of the 1999 constitution.

Under our judicial system, the Federal Government pays part of the salaries of the judges of the State judiciary.

This completes the picture and the peculiarity of a unified judiciary in our "federal" system of government.

WHEN DID IT ALL GO WRONG?

The answer unmistakably was 1979

The military leader who abolished the principle of "50% allocation of revenue from mining royalties and rents and to state of origin" and gave it all to the Federal Government in 1979 killed the principle of fiscal federalism. It was the same military leader who gave Nigeria a "unified judiciary" in a supposedly federal constitution. It was this same military leader who in our federal constitution took away the entire local government system from state governments to be shared as a function or power with the Federal Government.

And it was General Obasanjo who in the 1979 Constitution inserted protection for military coup in our constitutions. President Buhari was a Minister in that Federal Government.

THE CASE FOR THE REVIEW OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 AND RETURN TO THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1963 (AS MODIFIED)

The 1979 Constitution was bad enough in eroding the concept of federalism.

The 1999 constitution has installed a unitary system of government in our land. For proof, read on :

1. REVENUE ALLOCATION AND EXCLUSIVE LEGISLATIVE LIST

The 1960 and 1963 constitutions allowed import duties on certain commodities as well as on motor spirit and tobacco and export duties to be paid to the Regions by the Federal Government. Mining royalties and rents were distributed under a formula which allowed 50% of the revenue to the Region or State of origin, 30% to the Distributive Pool for distribution among the States, and only 20% of the revenue to the Federal Government.

The Constitution of the Federal Republic of Nigeria, 1999 puts all the eggs into one basket. By section 162 (1) of the constitution "all revenue collected by the Government of the Federation" shall be paid into "the federation account" out of which the Federal Government takes 52% to service its Exclusive Legislative List. The State of origin of "any natural resources" takes 13%, and the balance is doled out to States and local governments on a monthly basis. Hence the long queue at Abuja by State Finance Commissioners to collect their share !

The formula for revenue allocation was designed for specific purpose in the 1950's; it was not pulled out like the magic wand. It was designed for a federal system of government by Raisman's Fiscal Commission whose appointment was approved by all the political leaders in 1957 and whose Report took account of the needs of regional and the federal governments to service their legislative functions as contained in the legislative lists in the constitution. The Commission's Report was approved by all the political leaders and incorporated into our constitution.

We must revert to the revenue allocation formula as contained in the 1963 constitution if we are to free the states from the shackles imposed by section 162 of the 1999 constitution.

We recall the years before and after independence in 1960 when Action Group, followed closely by NCNC, spent 40% of their regional budgets on "*education"* alone, and a little less on "*health*". Along with NPC, the three regions embarked on a healthy rivalry in rapid economic development of the regions under their control, financed by a fair and just revenue allocation formula in the constitution.

The revenue allocation formula in the 1963 constitution ensured that each region or state as of right enjoyed a fair percentage of revenue from its own resources located in the region and some revenue from the distributive pool.

Allocation of 20% of the revenue under the 1960 and 1963 constitutions was enough to service Federal Government functions even during the 1967 – 1970 civil war.

The concept of "minorities" was dead and buried with the creation of new states in 1967.

The non Yorubas in the Western Region had a new state called "Mid-West", in 1963. The "Calabar – Ogoja – Rivers (COR) Movement" of pre-independence years had two states : Rivers and South-East. And with the Tiv and Ndoma, the Kanuri and the Yoruba in the North with their own states, the Northern Region ceased by its size and population to threaten the corporate existence of Nigeria or dominate her politics in good sense.

We must have courage to dismantle Niger Delta Development Commission and the Yar'dua Programme and restore the 50% state of origin revenue allocation formula as in the 1963 constitution. This also should apply to all other mineral producing states in the country.

Oil spill however should be treated as a national disaster, like any other in the country. We must as a nation protect our environment.

2. DEVOLUTION OF POWER: THE LEGISLATION LIST

An addition of 24 other functions or powers to the Federal Government in the Exclusive Legislative List, functions like

a. quarantine,
b. Public holidays
c. Award of national holidays,

does not justify an increase in the revenue allocation from 20% to 52% or 54% of the Federation Account to the Federal Government alone.

On the other hand, the state governments with heavy responsibility for functions like :

i. health,
ii. education (primary and secondary) and tertiary,
iii. physical planning,
iv. housing,
v. agriculture,
vi. water supply.

and several others which require heavy expenditure for the welfare of the people in the regions or states deserve more than what is doled out to them today out of the Federation Account under the 1999 constitution.

The 1963 constitution formula for revenue allocation is preferred and just. It encouraged economic development and healthy rivalry among the regions or states.

The Exclusive Legislative List ought to revert to 44 items as in the 1963 Constitution, with only a few of the new ones contained in the 1979 list.

Items or functions like "police" and "prison" ought to return to the Concurrent Legislative List Others include :

1. *Bankruptcy and insolvency,*
2. *Census,*
3. *Labour,*
4. *Promotion of tourist industry,*
5. *Registration of business names.*

Finally, vigorous efforts must be made by the state governments to prevent the Federal Government from encroaching on residual powers of the States.

On its part, the Federal Government must make the supreme effort not to encroach any more on the legislative space of state governments. It must be constantly emphasized that "Federal Government" as defined by Prof. K. C. Wheare, "consists in a division of the functions of government between an independent common authority for the whole country and independent authorities for the constituent parts of the country".

The Federal Government must respect the independent authority of state governments over legislative powers vested in them by the constitution itself.

3. ELECTORAL PROCESS: POLITICAL PARTIES

Political parties should not be substituted for Nigerian citizens as candidates for election at the polling booth.

The provision to register political parties in a democratic society should be expunged from the constitution.
Let a thousand flowers blossom. Let a thousand thoughts contend.

4. INDEPENDENT CANDIDATURE

Since 1923 until lately, Nigerians voted for human beings, and not political parties at parliamentary and local government elections. We should go back to that system. *Independent candidates* should be allowed to stand for election. Their fundamental right to be voted for should be respected

and protected by the constitution. Every candidate should not be bound by the constitution to be a member of a political party.

We must put an end to this monster: Dictatorship of political parties is an aberration in a democracy.

5. JUDICIARY

There is a great departure from the past about the appointment discipline and removal of Judges of the High Court of a State. The Federal Government shares control and payment of their salaries with the state governments, against all federal norms. Under section 271 of the 1999 constitution, appointment and removal of the Chief Judge and other judges of a State High Court are made by the Governor on the recommendation, not of the State Judicial Service Commission but that of the National Judicial Council.

The National Judicial Council similarly interferes with – or indeed controls – the appointment, promotion, discipline and removal of the judges of the Sharia Court of Appeal of a State under section 276 of the constitution as well as judges of the Customary Court of Appeal of a State. See, section 281 of the 1999 constitution.

The National Judicial Council has taken over the judiciary of the states under a federal system of government !

That cannot be.
And that should not be.
The Federal Judiciary cannot swallow the State Judiciary. Federalism implies that State Judiciary must, like all other functions, be independent of the Federal Judiciary.

We should go back to the 1979 constitution whereby judges of the High Court of a State were appointed by the Governor of the state, acting on the advice of the State Judicial Service Commission, and subject to a simple majority vote of the State House of Assembly.

Removal of the Chief Judge of a State or Grand Kadi, the President of the Customary Court of Appeal of a state from office must be by the by the Governor, on the advice of two-thirds majority of the State House of

Assembly. Judges of the High Court of a state should be removed by the Governor upon the recommendation of the State House of Assembly.

6. SECTION 6 (6) (D) OF THE CONSTITUTION

Expunge from the 1999 constitution section 6 (6) (d) which reads :

> *"The judicial powers vested in accordance with the foregoing provisions of this section*
> *" shall not, as from the date when this section comes into force, extend to any action or proceedings relating to any existing law made on or after 15th January, 1966 for determining any issue or question as to the competence of any authority or person to make any such law".*

Similar provision featured in the 1979 constitution.

This constitutional provision is designed to bar any citizen from challenging the competence of military governments to make any decrees and edicts from January 15th 1966 throughout the various military regimes.

It will encourage military coup d'etat in future as the armed forces cannot be held accountable for any acts committed while in power.

If the National Assembly can be challenged in a law court on its competence or authority to make any existing law either during the presidency of Alhaji Shehu Shagari or since 1999 till today, why not the military on its competence to make a decree or edict since 1966 which remains an existing law ?

Section 6 (6) (d) of the Constitution should have no place in a democratic society. It is unique. No other country allows similar provisions in its constitution, following a military dictatorship or intervention.

7. LOCAL GOVERNMENT

All references to "local governments" in the constitution should be expunged, except section 7 which affirms "a democratically elected system of local government".
Local governments are not tiers of governments, nor are they "federating units" as erroneously argued in the news media.

Federalism embraces five major elements which include :

a. a union of autonomous states;
b. division of powers between the Federal Government and the States.
c. Independence of each State Government in the exercise of its constitutional powers separate completely from the independence of the Federal Government in the exercise of its own powers.

It is enough to leave it to each State House of Assembly as stated clearly under section 7 (1) of the constitution.

> "to ensure the existence of local councils under a Law which provides for the establishment, structure, composition, finance and functions of each council".

8. CREATION OF STATES

Creation of new states should now be abandoned.

The cost of governance is not in support of creation of new states, each with its own governor, commissioners, special advisers, special assistants - all in the executive branch, along with its civil service and parastatals and with its own House of Assembly, civil service commission, and of course its own Judiciary. The national economy cannot support the creation of any new state. Nor can the Federation Account be shared with yet another state ?

There is no room for "Zones" or "Regions" between a Federal Government and the federating units or states under a federal system of government. The zones or regions otherwise would also have their own paraphernalia of governance and legislative list. And the economy is not in support either. A confederal system of government will bring utter chaos to Nigeria .

NIGERIA : WHICH WAY FORWARD ?

The perfect fit for Nigeria is the 12 – State structure under the 1963 constitution.

We have made a comparative analysis of all the constitutions which have served Nigeria since the introduction of a federal system of government in 1954:

1. Nigeria (Constitution) Order–in-Council, otherwise known as the Lyttleton Constitution, 1954
2. The Constitution of the Federation of Nigeria, 1960

3. The Constitution of the Federal Republic of Nigeria, 1963
4. The Constitution of the Federal Republic of Nigeria, 1979
5. The Constitution of the Federal Republic of Nigeria, 1999.

There is very little difference between 1960 and 1963 constitutions. One was for Nigeria as a Dominic on and the other as a Federal Republic: remove "Governor - General" and substitute "President". Save for the addition of "Mid West" as a region carved out of the Western Region, both constitutions were the same, In terms of acceptability by Nigerians, both 1960 and 1963 constitutions have no compare in the annuals of constitutional history of Nigeria.

There were constitutional conferences among all Nigerian political leaders 1957 and 1958 at Lancaster Hall, London attended by about 80 delegates and advisers in 1957 and 44 in 1958. Unofficial advisers of the political parties at the swelled the number to about 100 conferences in 1958.

Action Group, with Chief Obafemi Awolowo Premier of the Western Region as the leader had 14 and 8 delegates and advisers at the 1957 and 1958 conference respectively. Dr. Nnamdi Azikiwe, Premier of the Eastern Region, led the 17 and 10 NCNC delegates. And Sir Ahmadu Bello, the Sardauna of Sokoto and Premier of the Northern Region, led the 12 and 17 delegates representing Northern People's Congress.

Other parties or interest represented at both conferences included:
1. Northern Elements' Progressive Union, led by Malam Aminu Kano
2. Rivers Province was represented by Mr. H. J. R. Biriye
3. United Middle Belt Congress, led by Mr. J. S. Tarka
4. United National Independence Party, represented by Dr. Udo Udoma and Mr. Okoi Arikpo.

The delegates to both conferences were the cream "**a la creame**" of Nigeria's political class and leadership who led the country to independence from 1950/51.

In a joint memorandum submitted to the Colonial Secretary at the commencement of the 1957 conference, they demanded that the British Government should grant independence to Nigeria in April 1959 before agreeing eventually to 1st October 1960.

THE WAY OUT OF THE POLITICAL QUAGMIRE

President Muhammadu Buhari was reported recently as saying that the issue of restructuring was not a matter for the Executive branch of the government, but a matter for the National Assembly.

On its part, the National Assembly has forwarded some draft amendments to the Houses of Assembly of the states for their consideration. It required a two-third majority of the State Houses of Assembly before the constitutional amendments become law.

How much public discourse preceded the consideration of the constitutional proposals by the National Assembly is open to debate.

In this treatise however, we have discussed wide ranging matters and a number of constitutional issues which require not mere amendments but a root and branch examination of the constitution.

We have for example made a clear case for a truly federal system of government which allow the federal and the state governments to operate independent of each other in every respect within the true meaning of "federalism" or "federal government" as defined earlier.

We have also advocated the need for a return to fiscal federalism which will enshrines in our constitution equitable revenue allocation as in the 1960 and 1963 constitution by allowing states to enjoy the resources nature has endowed them with, while not denying other states and the federal government a reasonable share of such resources. That was the cornerstone on which Federal Nigeria was built at independence. Fiscal federalism was dealt a deathly blow in the 1979 and 1999 constitutions.

In the third place, we witnessed a progressive assumption of more legislative powers by the Federal Government at the expense of the State Governments. The items in the Exclusive Legislative List have ballooned from 44 in 1963 to 68 in the 1999 constitution.

We have also witnessed a trend in the Federal Government acquiring by stealth, certain residual functions vested exclusively in the State governments – functions like primary health care, lands (as for example Banana Island in Lagos), housing, primary education, agriculture and local government.

The Federal Government has now taken over the judiciary of the states in matters like appointment, control, discipline and removal of state judges. This includes part payment of salaries – a trend which began in 1979.

The constitution has also enthroned political parties as candidates for election at all levels instead of human beings or ordinary Nigerians as candidates. The electorate is called upon to vote for parties, which must be registered, and which are regimented under the constitution.

There is now a supremacy of political parties or party dictatorship in our constitution. The political party is supreme. It is the candidate at all our elections – local government, state and federal. Independent candidates have been denied the fundamental right to be voted for. They have been phrased out of the ballot box – wiped out of elections.

Finally, there is section 6 (6) (d) of the constitution which forbids legal challenge to the power or competence of the military governments to make laws following the January 1966 and subsequent coup d'etat. This applies "to any existing law" made by any of the military governments.

The matters or issues discussed above are fundamental to the existence of Nigeria as a Federation of States. These issues can no longer be swept aside. They must be placed before the Nigerian public for discussion and approval.

A National Sovereign Conference of all political parties including, the Peoples Democratic Party and All Progressive Grand Alliance, and civil societies including the Labour Movement and the Youth must be convened to deliberate on the various issues, followed by a referendum if Nigeria is to survive as a nation.
President Muhammadu Buhari must take the lead in this direction, especially as ***restructuring*** is the manifesto of the All Progressive Party on which he was elected the President of the Federal Republic of Nigeria. He can no longer fold his hands and claim that it is a matter for the National Assembly to resolve by amendments. It is beyond the National Assembly to resolve if Nigeria is to survive as a nation.

THE TIME CALLS FOR NEW BREED OF NIGERIANS

Nigeria does not deserve the collective leadership it has today among the political class : the collective leadership that decides to provide itself with a one – line vote in the annual budget is not honest with the electorate and with the

people. Both the ruling political party and the opposition party are guilty of collusion in this respect.

The ***divide*** between the leading parties is not based on any political ideology. It is based on ***self interest***. That is why it is very easy for the politicians to criss-cross the carpet with ease and aplomb when they fail to obtain nomination for election to a political office or they believe they will be denied such nomination by their party. That is part of the tragedy in our political life.

Religion has unfortunately been brought into politics by some religious zealots who otherwise have nothing to offer our people. That also is part of the tragedy of political life in Nigeria today.

And finally, there are those who fan ethnicity to divide our people.

Ibibio Union was perhaps the first organized ethnic group in Nigeria which awarded scholarships to Ibibio sons to study in Europe. One of its first students was Sir Udo Udoma who proceeded to Dublin to study law in 1938. The Union's sole aim was at the time to promote education of its leadership overseas.

In 1947 however, with the introduction of Richards' constitution, Ibibio Union changed its name to "***Ibibio State Union***" to serve notice that "Ibibo land deserved to be a separate state". Soon thereafter Ibo Union also changed its name to ***Ibo State Union*** "to constitute a state for Ibo people"[17].

The third significant development in the emergence of politics of ethnicity was the establishment of ***Egbe Omo Oduduwa*** in London in 1945 by Chief Obafemi Awolowo and Dr. Oni Akerele. The Egbe was formally inaugurated in Lagos in

1948 with the aim of forging the Unity of all the Yorubas especially in the Western Region. The Oni of Ife was the patron. It led to the emergence of Action Group as a political party in 1951.

We have already said enough about the minority groups and the demand for and eventual creation of states in previous chapters. We have also noted the creation of ethnic associations among the majority populations, in particular among the Yorubas and the Igbo. It is the incursion of these groups in politics that causes ethnic conflicts and division in Nigeria today.

This however must be said to the credit of Chief Obafemi Awolowo. Although a protagonist of regionalism, once ***the Action Group*** was launched as a political party in 1951, ***Egbe Omo Oduduwa*** no longer played any further political role. It was confined mainly to propagation of Yoruba culture.

Dr. Nnamdi Azikwe did not depend on Ibo votes to win and sustain his massive political support in Lagos Colony and the Western Region, especially among the Oyo, Ibadan and Ijesha Yorubas. Political battles in Lagos were dominated by the Nigerian National Democratic Party of Herbert Macaulay after the 1945 General strike led by Michael Imodu, in alliance with the newly inaugurated NCNC.

17. See, The Eagle in its Flight (Being the Memoir of Hon. Sir Udo Udoma) published by Grace & Son 2008 at pp 32, 91 – 96.

"***Demo lo ni Eko,***" until the sweeping Action Group Lagos Local Government Council election following Chief Awolowo's treasonable felony trial in 1962/63. The membership of Democratic Party and of the National Council of Nigeria and the Cameroons was essentially Yoruba. Ibo State Union vote played little or no significant role in Zik's electoral success in Lagos and the Western Region.

The successors to ***Egbe Omo Oduduwa***, ***Ibo State Union*** and a new organisation from the Northern States, ***Arewa Consultative Assembly*** have made no pretext to the promotion of the culture of their people. They are political parties, though not registered as such by the Independent Nation Electoral Commission (INEC). They pollute the political air with ethnic jingoism, not allowing Nigerian nationalism to thrive or flourish.

Afenifere was a group of leading members of the Action Group under Chief Awolowo's leadership during the military rule when political activities were banned. Like ***Egbe Omo Oduduwa*** did for Action Group in 1951, ***Afenifere*** paved the way for the Unity Party of Nigeria in 1978 when the ban on political parties was lifted. "***Afenifere***" then went into abeyance between 1978 and 1983. Although Unity Party of Nigeria (UPN) resurfaced after the military interregnum in 1999, first as Action Party, later Action Congress and now as a part of Action Progressive Congress without the gift of Chief Awolowo, a section of "***Afenifere***" has refused to go away. It thrives on Yoruba nationalism.

Arewa is a group of powerful Nigerians from the Northern States whose main declared objective is to defend the political interests of "***the North***". What these "interests" are do not bear any definition and therefore not shared with the rest of Nigeria. The main interest of Arewa can only be attainment of political "***power***". Besides personal wealth, the old "**North**" has little to show for attainment of power by the "**Northern**" power brokers.

Ohanaeze Ndigbo is a recent phenomenon. It declared recently that

> "out of the 36 states of Nigeria apart from the seven states where Igbo are aborigines, there is no state that has more Igbo population than Lagos. The size of the Igbo in Lagos is more than the population of some states. Igbo in Lagos are hard working. Igbo investments in Lagos State are more than Igbo investment in the entire Igbo ……. There are no fewer than four million Igbo in Lagos but there is no Igbo in the Lagos executive council……. The problems Igbo are having in Lagos Ohanaeze are giving us sleepless nights in Enugu".

The President General of Ohanaeze declared his opposition to an independent Igboland, recalling the horrors of the civil war. He however expressed his desire to organize elections among all Igbo people resident in each state for the leadership of Ohanaeze, starting with Lagos State.

There are 11.6million Igbo in Northern Nigeria, he added : "That is how Catalonia started" he was quoted as saying!

An echo of Daddy Onyeama's careless statement at Island Club in the early 1960's:

"Igbo domination of Nigeria is a question of time"!

This sort of incendiary language is a threat to the unity of Nigeria. It almost caused mass movement of Nigerians in the Northern states and South Eastern states in 2017. Hate speech divides the nation. This type irreparably.

The Republic of India has a population of one million, three hundred. Anywhere in the world, an Indian is proud to call himself an Indian, not a "***Gujurati from India***".

A Chinese, out of one million four hundred Chinese from the Republic, is proud to tell the world that he is a "***Chinese***". He will not describe himself as "a man from Shanghai in China".

May the day come in our life time when a Nigerian will be proud to call himself "a Nigerian", instead of Yoruba, Igbo, Hausa, Ijaw, Kanuri or Fulani.

The times call for a new breed of leadership, shorn of ethnicity and religious bigotry, incorruptible and loyal to Nigeria, free and strong, and ready to take its place in the community of world powers.

The Mantra of the New Breed: Service to the Fatherland, Nigeria.