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Re-Examining Nigeria's Federalism

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1.0 Introduction

By the provisions of section 2(1) & (2) of the Nigerian Constitution, Nigeria is said to be a federation, comprising of states and a federal capital territory. A federation has been defined as 'a system of government with coordinate powers none of which is superior to the other'¹ Certain basic minimal structures are required for a country to lay claims to the practice of federalism, these include; a political system in which there is power sharing under a written constitution, and a government consisting of at least two orders: a central or federal government and the governments of the constituent units.² Nigeria has been a federal state since 1954,³

yet in practice it cannot be said that Nigeria is a true federation going by the structure and workings of government under the Nigerian structure. Although Nigeria consists of 36 states and the federal capital territory,⁴ which can be referred to as federating units, operates a written constitution where powers between the federating units are clearly defined,⁵ it has been argued that Nigeria's federalism is skewed in favor of the center giving it too much dominance over the states.⁶ This assertion was recently buttressed by the vice president of Nigeria Prof. Yemi Osinbajo, at the 59th independence anniversary lecture titled "Why states must control their own resources, get more powers."⁷ The vice

¹ Wheare, K.C., 1962. Federalism and the Making of Nations. *Federalism: Mature and Emergent*, New York: Russell & Russell Inc. Pages. 28–43.

² Ibid

³ See the 1954 Lyttleton Constitution. Available at <https://legalsociety.com.ng › the-lyttleton-constitution-1954>

⁴ See Section 3(1) & (4) of the 1999 constitution

⁵ Nwabueze, B.O., 1983. *Federalism in Nigeria under the presidential constitution* London: Sweet & Maxwell. Page. 354

⁶ Nkwede O.J, Dauda K.O & Orija A.O 'Federalism and Contending Issues in Contemporary Nigeria: Mapping Alternative Perspectives for a neo-Federalist Paradigm' *Canadian Center of Science and Education, Asian Science Journal* Vol. 14, No. 10; 2018 Pages 113-115

⁷ Agbese D. 'Osinbajo on our flawed federalism' *Daily Trust*, Wednesday, October 30, 2019. Available at <https://www.dailytrust.com.ng › Latest Posts>

president in his speech advocated for balance of power between the federal government and the states. He specifically called for state autonomy in the management of their resources, he stated that *“The nation cannot be wealthy when its component parts – the states – are poor. The standard of living of the federation depends on the standard of living of people who live in the states. In other words, the federation can only be as rich as its richest state and as strong as its strongest state. “Our national indices merely aggregate the realities of our weaknesses and strengths as present in all our constituent units. Consequently, we can only build a stronger and more prosperous nation by building a stronger and more prosperous states. “Building stronger states means ensuring the devolution of more power to the states, enabling them to control more of their resources and make more of their own administrative decisions such as the creation of local governments, the establishment of state and community police forces as well as state correctional facilities; creation of special courts and tribunals of equivalent jurisdiction to high courts.”*

This brief seeks to explore some alternatives to strengthening Nigeria’s federalism in the light of the current realities facing Nigeria’s federalism, which has made the federal government too powerful and in control of the federating units. The federating units are

almost comatose and entirely dependent on the federal government. The brief also recommends a constitutional amendment process to expunge provisions that negate federalism and provide for implementation of true federalism.

2.0 Challenges of Nigeria’s Federalism

It is no longer news that the long years of military rule in Nigeria has affected the Nigeria’s political structure. Despite the return of Nigeria to democratic rule since May 1999 till date, the effect and style of military governance is still being felt.⁸

The Unitary system of administration under the military rule, where there was in existence a centralized command and authority structure in place seem to still be the practice in Nigeria despite being a federation. Ideally there should be a system where federating units ought to independent and coordinate and the federating units contributing parts of their sovereignty to a central authority,⁹ But what is currently being practiced in Nigeria, is a situation where the federating units are agents of the central government dependent on it for survival.¹⁰ With the current revenue administration and collection becoming increasingly centralized, which in turn makes expenditure responsibilities and government functions also becoming centralized, with the federal government assuming the role of the

⁸ Nkwede O.J, Dauda K.O & Orija A.O ‘Federalism and Contending Issues in Contemporary Nigeria: Mapping Alternative Perspectives for a neo-Federalist Paradigm’ *Ibid*.

⁹ Obiyan, A.S. and Amuwo, K. eds., 2012. ‘Nigeria’s Democratic Experience in the Fourth Republic since 1999: Policies and Politics’. *University Press of America*. . Pages 23-25

¹⁰ *Ibid*

engine of social and economic development.¹¹

The implication therefore is that instead of operating as co-equals, the federation is run as a unitary state against the tenets of federalism as put forward by Prof Wheare¹² This has led to series of political quagmire, constitutional crises and civil suits which has threatened the political and economic stability of the Nigerian state with the attendant effect of struggle among various ethnic groups for capture of the state power and control of resources.¹³ This has further encouraged a deep sense of alienation and politics of ethnic identity.¹⁴

The current constitution of Nigeria¹⁵ which some scholars have referred to as a military

constitution¹⁶ also by default concentrate more powers on the federal government as opposed to the state governments.¹⁷ This act of omission or commission by the drafters of the constitution has further given the federal government too much control over the federating units (states), which has made the states subservient to the center. Thus a continuation of what was obtainable under the military rule appears to be in force in the current dispensation. This has been challenged in a number of cases where the limits of the powers of the federal government has been questioned. These include the cases of A.G Abia V. A.G Federation,¹⁸ A.G Lagos V. A.G Federation,¹⁹ and A.G Ogun V. A.G Federation²⁰

¹¹Stuti Khemani 'Fiscal Federalism and Service Delivery in Nigeria: The Role of States and Local Governments' a paper prepared for the Nigerian PER Steering Committee. July 2001. Available online at <https://www.semanticscholar.org › paper › Fiscal-Federalism-and-Service-De...>

¹² (Wheare, K.C., 1962. Federalism and the Making of Nations. Federalism: Mature and Emergent, New York: Russell & Russell Inc. *Ibid*

¹³ Olu A., Akpowoghaha O, and Goldpin N. "The Challenge of Federalism and Its Implications for the Nigerian State" *International Journal of Politics and Good Governance Volume VIII, No. 8.3 Quarter III 2017*. Pages 2-5

¹⁴ *Ibid*

¹⁵The 1999 Constitution as amended

¹⁶ Frank E.O & Wilfred I. U (2012) 'The Impact of Military Rule on Democracy in Nigeria', *Journal of Social Sciences*. Available online at <https://www.tandfonline.com › doi › abs>

¹⁷ See second schedule to the 1999 Constitution

¹⁸ (2001) 11 NWLR 689. The issue for determination was whether the National Assembly could enact an Electoral Act that contained provisions stipulating tenure of office of elected local government officials. The court held that: '...the tenure of elected Local Government officials is a matter within the legislative jurisdiction of the House of Assembly of a state rather than the National Assembly. It also held that the doctrine of covering the field could not be used to override constitutional provisions...'

¹⁹ (2002) 6 NWLR (Part 762). In this case the court held that: '...the adoption of a federal system presupposes that neither the federal nor state government was subordinate to each other and that each possessed its own autonomy. Accordingly, the federal government could not in contravention of the constitution impose any obligation on a government of a state...'

²⁰ (2002) 18 NWLR (Pt.798) 232 The question for determination in the above case was whether the federal government could in the exercise of its powers constitutionally impose a duty or confer powers on the government of an autonomous state. The court held that: '... neither the National Assembly nor the President has the Constitutional power to impose any new duty on the Governor of the State. Such an imposition would normally meet

The Nigerian Federal structure is said to be unique with its own peculiarities. In 1951 the committee on the review of the Nigerian Constitution, had observed the unique nature of the Nigerian federal concept and the peculiarities of her federal framework.²¹ The Committee stated that the federal governments of USA, Canada and Australia have been built on the basis of separate states surrendering to a federal government some of their powers for the benefit of all. The reverse process on which we are engaged that of the creation of a federal government by devolution is a political experiment for which... there is no precedent to guide us and we are very conscious of the dangers involved in such an experiment.²²

It is a fact that not all federal states are the same in terms of composition and structure, each operates with its own peculiarities and the basis for which the federation was established, notwithstanding, certain basic principles must be present for such a state to be considered a true federation as highlighted above.

The uniqueness and peculiarities of the Nigerian State which reflects in the practice and structure of its federalism is not the issue at the moment but an examination of the basic

tenets of federalism in Nigeria, whether significantly upheld or not.

3.0 Federalism as Practiced in Other Jurisdiction (Australia and the USA)

▪ USA

The United States of America practices a federal system of government, with the federal at the center and the largest, and fifty states and thousands of smaller units, counties, cities, towns and villages who are equally very important with enormous powers.²³ The drafters of the American Constitution created this multilayered system of government, they made the national structure supreme and assigned it certain specific functions, such as defense, currency regulation and foreign relations;²⁴ yet they wisely recognized the need for levels of government more directly in contact with the people, and left many other responsibilities in the hands of state and local jurisdictions.²⁵

▪ AUSTRALIA

The Australian Constitution established a federal nation, where powers were to be shared by the national (Commonwealth) government and six member states—the

with resentment and refusal to perform for the enforcement of which there is no constitutional sanction...'

²¹ Amah E. I 'Federalism, Nigerian Federal Constitution and the Practice of Federalism: An Appraisal' *BLR Vol.8 No.3, September 2017*. Available online at <https://m.scirp.org/papers>

²² Nwabueze, B.O., 2007. *How President Obasanjo Subverted Nigeria's Federal System*. Gold Press. Page 402.

²³ 'Issues of Democracy' *Electronic Journals of the U.S. Information Agency* Available online at <https://usa.usembassy.de/etexts/gov/ijde0497>

²⁴ National *powers* are enumerated (Article I, Section 8, paragraphs 1–17), of the American Constitution.

²⁵ Although powers of the state are not enumerated in the constitution, any such power not mentioned as powers of the federal government belongs to the state by default. See the Tenth Amendment to the American Constitution.

former British colonies.²⁶ Under Australian Federal System each state is governed by its own constitution, but where the laws of the state are inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid.²⁷ By the provisions of section 112 of the constitution, states may levy on imports or exports, or on goods passing into or out of the State, such charges as may be necessary for executing the inspection laws of the State. Although the Federal government has exclusive power over Power, customs, excise and bounties²⁸ Section 118 of the constitution also gives recognition to the laws, the public Acts and records, and the judicial proceedings of every State.

4.0 Building Nigeria's Federalism; Way forward.

Certain steps then to be taken to put Nigeria on the path of practicing true federalism, these include but not limited to;

- i. Devolution of Powers : The current constitution of Nigeria needs to be amended to grant more responsibilities to state as practiced in other jurisdiction where the practice of federalism have thrived. The second schedule to the 1999 Constitution should be amended to reduce the

responsibilities of the federal government to services like Foreign Affairs, Currency, Immigration and Defence.

- ii. There should be a review of the Revenue Allocation Formulae to emphasize the Derivation Principle and allocation of larger percentage of resources to states. The vexed issue of resource control for the states must be looked into, States should be able to manage their resources and contribute to the center.²⁹
- iii. Some key recommendations of past National Conferences on the Nigerian State should be implemented especially as it affects the question of Nigeria's federal structure.
- iv. There should also be a political will from the Nigerian leaders to take the needed action to put Nigeria on the part of greatness, the call by the vice president Osinbajo on true federalism is a welcome development.
- v. Both the Federal and State governments should be more responsive and responsible to the plights of their people rather than

²⁶ 'The politics of the Australian federal system' *Parliament of Australia Department of Parliamentary Services Parliamentary Library Research Brief Information analysis and advice for the Parliament 1 December 2006, no. 4, 2006-07, ISSN 1832-2883* . Available online at <https://www.aph.gov.au › binaries › library › pubs>

²⁷ See Sections 106&109 of the Australian Constitution

²⁸ See Section 90 of the Australian Constitution

²⁹ Olu A., Akpowoghaha O, and Goldpin N. "The Challenge of Federalism and Its Implications for the Nigerian State. *Ibid*

the pursuit and achievement of their political goals.³⁰

5.0 Conclusion

It is an established fact that Nigeria's Federal structure is skewed with enormous concentration of powers in the center. The clamour for true federalism has taken the center stage in recent times, hence the need for decisive action by all stakeholders to rejig Nigeria's federalism into an ideal federal structure where all the component units function effectively. The benefits of practicing true federalism cannot be ignored, as seen from the postulations of the vice

president above, a federation can only be as rich as its richest state and as strong as its strongest state. National indices merely aggregate the realities of the weaknesses and strengths of a nation's constituent units. Having an economically viable, financially independent and politically vibrant constituent units, will enhance the overall economic and political wellbeing of the nation. There is an urgent need to take decisive steps in implementing these viable recommendations in ensuring Nigeria becomes a true federal state for the good of all.

³⁰ Nkwede O.J, Dauda K.O & Orija A.O 'Federalism and Contending Issues in Contemporary Nigeria:

Mapping Alternative Perspectives for a neo-Federalist Paradigm *'Ibid*