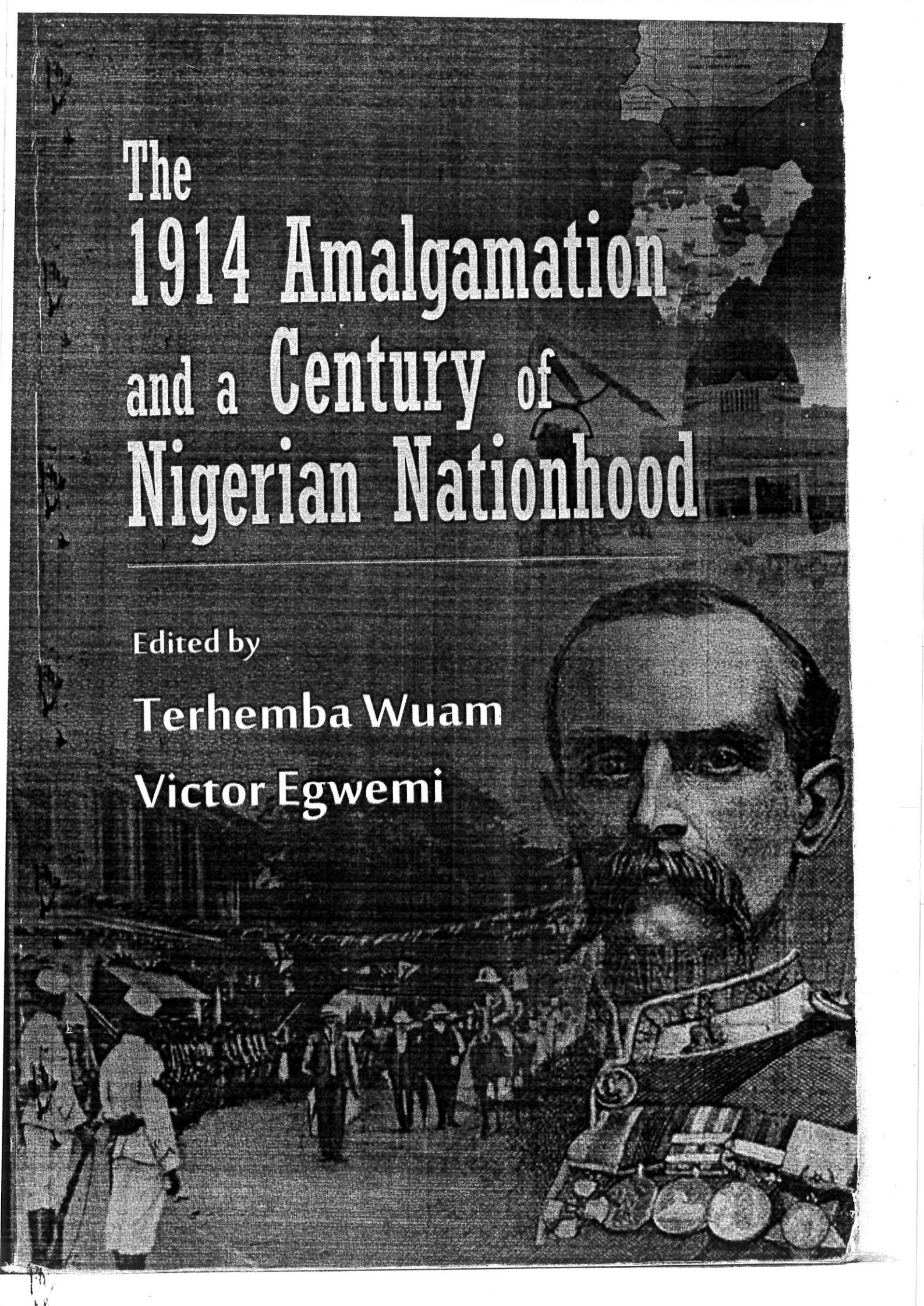
The 1914 Amalgamation and a Century of Nigerian Nationhood



Edited by

Terhemba Wuam

Victor Egwemi

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PUBLISHERS

Contents

Acknowledgements vi

Foreword by Professor Sati Fwatshak, FHSN xiii

Introduction xv

Part I: Amalgamation, Politics and Nation Building

1. Political Development and Statehood in Nigeria, 1914-1979
Ponfa D. Kums 1

2. The Amalgamation Story and Misrepresentation of the Making of Nigeria: Periscoping Nigeria since 1914
Emmanuel Osewe Akubor 3

3. Nigeria, 1914-2014: Reflections on Amalgamation and Regional Politics in Northern Nigeria
Sama'ila Abubakar 40

4. The Amalgamation of 1914 and Its Impact on the Contemporary Manifestation of Politics in Nigeria, 1999-2015
Ibrahim Danmaraya 58

5. Nigeria and the Burden of State-Building and National Cohesion since 1914
B. Ajala Luqman 68

6. The 1914 Amalgamation and the Political Development of Nigeria
Abdul-Majeed Alkali 81

7. National Integration and Nation Building since 1914: Need to address Primordial Structures
Dawood Omolumen Egbefo 106

8. The Amalgamation of 1914 and Nigerian Nationhood
Boumo Ezonbi, Chukwudubem Justice Molokwu & Changwak Emmanuel Jonah 129

9. The 1914 Amalgamation and National Cohesion in Nigeria
Timothy Zakimayu Barje 141

10. Federalism and Political Parties in Nigeria's Fourth Republic
Ighodalo Akhakpe 156

11. Conflict and Other Challenges of Nationhood in Nigeria
Mashud Layiwola Adelabu Salawu & E. O. Adeoti 174

12. Governance in Nigeria: Issues, Challenges and Way Forward
Tabiu Abubakar & Sabiu Malam Salihu 192

13. Ethno-Religious Identity and Indigene-Settler Question in Nigeria: Challenges for Nation Building
Otegwu Isaac Odu & Alfa Mahmoud Bala 206

14. Leadership Struggles and Security Challenges of Nationhood: A Source of Inter-Ethnic Conflicts in Kaduna since the 1914 Amalgamation
Ashiru Sani & Fatimah Dembo Bello 217

15. Ethnic Diversity and National Integration in Contemporary Nigeria: An Assessment of Nigeria's Experience in Nation-Building
I.I. Yahaya 230

16. The Dearth of Peace and Unity in Nigeria: The Law as the Culprit
Oyesola Animashaun 243

17. Nigeria's Development in the Next 100 Years: What Is To Be Done?
H. A. Alahira 259

18. Nigeria at 100, 1914-2014: Alternative Projections for the Next 100 Years
Ejura C. M. Ugbeda & Victor Egwemi 269

Part II: Pre-Colonial to Post-Colonial Local Governance 285

19. The Evolution and Transformation of the Local Government System in Nigeria
Suleiman Samaila Adamu 287

20. British Colonial Government Dealings with the Emirs of Kano, 1914-1963: Revisiting Some Salient Issues
Gaddafi Abubakar 302

21. United Nations Plebiscites in Northern Cameroons: Post-Colonial Issues and Challenges in Sardauna Local Government Area of Taraba State, Nigeria
Nsemba Edward Lenshie & Jiebreeal Yakubu Gambo 315

22. The Evolution of the Nigerian Local Government System, 1914-2014
Linus Ugwu Odo 348

23. Traditional Leadership and Chieftaincy Institution in the Governance of Nigeria since 1914: The Survival Instinct
Mohammed Lawal Salahu & Alhaji Ibrahim Liman 368

24. Communal Warfare in Igbo Heartland, the Umuleri-Aguleri Conflict in Anambra State: Consequences and Security Implications, 1933-1999
Eze Jonas 383

25. The Traditional Institution and Democratic Governance in Ondo Kingdom, Ondo State, Nigeria, 1510-2010
Dare E. Arowolo 397

Part III: Society and Economy since 1914 409

26. An Appraisal of Nigeria's Economic Development since 1914
George Amissah & Micheal D. Oisamoje 411

27. The British Mining and Oil Regulations in Colonial Nigeria c. 1914-1960: An Assessment
A.O.Y. Raji & T.S. Abejide 435

28. Nigeria since the 1914 Amalgamation: A Historical Overview of Its Socio-Economic and Political Transition
Emma-Lawson Hassan 454

29. Amalgamation and the Transformation of the Economy of Central Nigeria in the Twentieth Century
Terhemba Wuam 470

30. Agricultural Policies and Programmes under Colonial Directors of Agriculture in Nigeria, 1921-1954
Yiolokun Isaac Babatunde 489

31. Appraisal of the Transportation System in Nigeria, 1914-2012
Anthony Danladi Ali 504

32. The Development and Impact of Road Infrastructure on the Nigerian Economy, 1914 to 2014
Dominic A. Akpan 521

33. Problems and Decline of the Railway in Nigeria, 1912-1993
Gaius Jatau 531

34. The Amalgamation and Changing Scenario of Educational Development in Nigeria
Mohammed Usman 550

35. Gender Mainstreaming and Nigeria's Development since 1914
Michael D. Oisamoje, Enaruna Ehimwenma Idubor & Onyenkachi Emilia Wogu 563

36. Women and Development in Nigeria since 1914
Uchenna Teresa Akamigbo 585

37. Amalgamation of Nigeria: Towards Unity and Prosperity
Bem Japhet Audu 603

38. Nigeria: The Way Forward
Ada Okau 613

Contributors 619

Index 623

16. The Dearth of Peace and Unity in Nigeria: The Law as the Culprit

Oyesola Animashaun

Introduction

Nigeria is a nation conceived in crises, it was not purposed for its peoples.[1] It was an imperialistic contraption and an administrative superstructure done mainly to reduce administrative cost, without taking into consideration the culture, mores, traditions and the norms of its different peoples. The British imperialists also acknowledged this when a former governor-general of colonial Nigeria, Sir Hugh Clifford observed that: "Nigeria is a collection of independent native states, separated from one another... by great distances, differences of history and tradition and by ethnological, racial, tribal, political, social and religious barriers".[2] Nigeria is a huge country, a land of contrasts, a country of unfulfilled hopes, and unrealised promises.[3] This assertion was given credence by a former Nigerian ruler, Obasanjo when he lamented thus,

> Nigeria is a country perpetually, potentially great, almost permanently in crises, regularly threatened with disintegration... devoid of democracy, and economically plundered and mismanaged, forever talking about democracy but retreating from democracy.[4]

The situation continually deteriorates despite various antidotes and experiments such as the unending transition programmes, constitutional conferences, corrective programmes and regimes. This has led a commentator to state that,

> Once Nigeria was considered the anchor and beehive of a huge continent, blessed with clever and energetic people, favoured with ample oil resources. It is also Africa's most populous country. But despite the size and wealth, Nigeria lingers in the doldrums, perpetually a country of the future.[5]

The objective of this chapter is to enunciate the manner by which the law has or is been used or manipulated by the power elite to create temporary advantage for themselves against the populace and sometimes the opposition party; to analyse the problem caused by this unwholesome practice to the polity and make appropriate recommendations.

The chapter examines the quality, use and misapplication of the extant laws, and the consequences of the violation of these laws for the stability, peace, unity and progress of the polity; how the impartial application and administration of the law would ensure peace and unity and reduce vices such as ethnicism, political violence, ethnic militias and the likes.

Conceptual Clarifications

The concepts that are central to this discussion are somehow controversial and rather ambiguous. Unity and peace for instance are relative. Unity is defined in the *Oxford Advanced Learner's Dictionary*as the state of being united or in agreement or presenting a complete and pleasing whole. It also defines peace as freedom from war or violence or a state of calm or quiet or a state of harmony or friendship. The same dictionary defines a state as a country considered as a political organisation and of the same race and language.[6]

For the purpose of this chapter the definition of state provided by Appadorai is adopted wherein he stated that: a state exists where there are a territory, a people, a government and sovereignty, it may lack the feeling of nationality or oneness among the people and yet remain a state.[7] A nation according to Ade-Ajayi are the inhabitants, the people together as sociological collectivity defined in terms of their ethnic and cultural identity and the consciousness of this shared identity. They may or may not constitute a state. In the Nigerian context, there are many nations within the Nigerian state e.g. the Yoruba, Ibo, Hausa-Fulani, Tiv, Ibibio nations and so on.[8]

Peace in our context means un-enforced calm, harmony, friendship and good will to citizens and alien alike. Unity is taken as a situation whereby the various component parts of the Nigerian state see issues from the prism of truth, justice and fair play, thus there will be agreement and the ability to present a common national front. Dissension here is based on idealistic ground rather than other extraneous factors. Paraphrasing the great American Civil Rights leader, Martin Luther King (Jnr),

> True peace is not merely the absence of tension; it is the presence of justice... It is not enough to say we must not wage war, it is necessary to love peace and sacrifice for it. We must concentrate not merely on negative expulsion of war, but on the positive affirmation of peace.[9]

Nigeria: A Giant among Nations?

The Nigerian press, government and others usually refer to Nigeria as the giant of Africa; it is the most populous country in Africa and the seventh most populous country in the world.[10] Apart from corruption, its occasional success in the game of football, its exceedingly large population and high population growth rate, the country is always at the tail end in ranking in all virtuous endeavours. In December 2011, Transparency International (TI) ranked Nigeria 143rd out of 183 surveyed countries in terms of public perception of corruption.[11]

The balkanisation of Africa by the European powers failed to take into cognisance the interest of the peoples of the colony. In extreme cases members of the same family found themselves in different countries; some live in Nigeria but have their farmstead in a neighbouring country and may be crossing international boundaries unknowingly every day.[12]

> The boundary between Dahomey (Benin Republic) and Nigeria was artificial in some cases it divided people of same clan and tribe, and in Oja Odan, it ran through a market that served people on both sides of the border.[13]

A man from Sokoto, in Northern Nigeria may have a greater affinity with his relations in Niger Republic or a man from Ilaro, south-western part of Nigeria may have a better bond with fellow Yoruba from Benin Republic than a fellow Nigerian.

The lack of unity in the geopolitical entity known as Nigeria manifest in veiled discrimination or total breakdown of law and order such as religious and ethnic riots, insurgency, terrorism, military mutiny, coup d'états and the likes. This pathetic lack of unity among the component nationalities that formed the Nigerian state made a leading nationalist, Obafemi Awolowo, to comment thus:

> Nigeria is not a nation. There are no Nigerians in the same sense as there are English, Welsh and French. The word 'Nigerian' is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria and those who do not. ... Nigeria is a mere geographical expression.[14]

Ahmadu Bello speaking on the same problem of elusive unity stated that, "the mistake of 1914 (i.e. the amalgamation of the Northern and southern Nigeria) has come to light".[15] Nnamdi Azikiwe equally observed that "tribalism is a reality. National unity can be a reality but at present it is not quite a reality".[16] Also Sir Abubakar Tafawa Balewa, stated in 1947 that "Nigeria has existed as one country only on paper, and that it was still far from being considered as one country much less think of it as united.'[17]. Gen. Gowon also admitted at a time that: "the basis for one Nigeria no longer seem to exist".[18] All these statements are indication of the great schism existing in the Nigerian society.

Each of the nations within the Nigerian state view national issues from sectional, myopic and self-serving perspective; this may be a hangover from the colonial policy of divide and rule, the amalgamation of different peoples without the appropriate policies, laws, institutions and checks. The effect of this is the creation of a fragile polity with the far-reaching problem of continuous striving towards unity and nationhood. It is important to state here that the Nigerian motto inscribed on the coat of arms is: unity, faith, peace and progress and the popular cliché at independence and thereafter is "unity in diversity"; both underscores the importance of unity in the attainment of peace and progress and national development.[19]

The Dearth of Peace and Unity: The Result of the Use or Misuse of the Law?

Johnson stated that the geopolitical entity known as Nigeria from inception was not purposed for its peoples.[20] The 1914 amalgamation of the Northern and Southern protectorates of Nigeria and the Lagos colony fused the administration of distinct peoples. The effect of using equal parameters in administering culturally different peoples was chaos, strife and violence such as Aba riots, the Iseyin and Egba revolts among others.

Nigeria gained independence from Britain in 1960 but the seed of disunity was firmly sown with the extant statutes. The existence of a

constituent region, Northern Nigeria which was larger in landmass than all the two other constituent regions put together with half of representation in the federal parliament[21] was a major part of the albatross that destroyed the new federation; Section 39 of the 1960 Constitution of the Federal Republic of Nigeria (CFRN) provided that only the male gender was eligible for election in the Northern region. There was also the fear of domination by the vast and mammoth north by her southern counterparts. The north also feared that its southern counterparts would dominate it because of their earlier exposure to western education. There was also the refusal of the British government and the First Republic power brokers to create states or new regions for the minorities despite the persistent agitation by the minority groups in each of the existing regions. It was an irony that the only region created was in the Western region which was probably the smallest in land mass. The creation of the Mid-Western region out of Western region may not be unconnected with the fact that Western region was then ruled by the opposition Action Group. The persistent demand for the Calabar-Ogoja-Rivers region in the Eastern region and the Tiv demand for the Middle Belt region, which led to the Tiv revolts of the 1960s, in which the Nigerian Army was first drafted to quell a civilian riot, in the Northern region were ignored and brutally repressed.

The misuse of the law could be seen in the promulgation of the Republican Constitution of 1963[22], a section of which abrogated retroactively appeals to the Privy Council of the House of Lord during the trial of the opposition leader and his supporters for treasonable felony.[23] Justice Esho opined that a constitutional amendment was rushed in by the federal government to prevent the opposition[24], Action Group (AG), to enjoy the fruit of its triumph at the Privy Council in *Adegbenro v Akintola*[25] by virtue of the same Act of Parliament. Also, the leader of opposition was not allowed the use of the counsel of his choice claiming that the latter suffered a liability.[26] The nature and politics of the First Republic leaves much to be desired and left a bad precedent for the Nigerian body politic. Politics was and still is the avenue for quick riches; its hallmark is violence, fraud, coercion, corruption and insecurity. The opposition or any opposition was viewed as an enemy and dealt with unmitigated cruelty. In the First Republic, there was crises and widespread violence, which include the Tiv revolts, the AG mega crises of 1962 and the associated "*wetie*" (whereby political opponents were soaked with petrol and set ablaze in the Western region) violence, the massively rigged federal election of 1964 and the flawed Western region election of 1965, among others.

The gross violation of the constitution and the misuse of the law led to the coup *d'états*, military takeover and the civil war. The other attempts at civilian rule did not fare better.

The law is used to create a very serious issue with regards to citizenship. 'Indigeneity' (ancestral place of origin) is placed before national citizenship. All Nigerians are overprotecting their indigeneity because of the attractions it offers, with regards to appointment, promotion and advancement in public office as well as admission in public institutions, among other advantages. Despite constitutional provisions that emphasise the importance and relevance of citizenship, particularly as regards the rights and obligations associated with it, indigeneity has consistently thwarted citizenship. Citizens are facing undue deprivation within the country contrary to Section 42(2) of the 1999 Constitution.[27]

Regionalisation and the successor policy of federal character intensified the animosity between the different groups. In 1954, with the approval of the British governor, the government of the Northern region adopted a policy of positive discrimination. Applicants from the north were given preference for all positions in the regional and local administration; if there were no suitable candidates available; Europeans were allowed to retain their posts where possible, otherwise Southerners were hired on fixed-term contracts. This led to the dismissal of thousands of non-northerners.[28] The north would rather 'import Pakistani doctors and lawyers en masse' rather than employ fellow Nigerians, even when the expatriates were less qualified.[29] Even when they had been born or lived in the north for decades, they had no claim to equal treatment[30]; for the policy of Northernisation was meant to defend the privileges of the indigenous population, so it classified citizens of other regions as strangers. Since then, it has become customary, in other parts of Nigeria as well, to give preferential treatment to members of autochthonous groups: in filling administrative posts and teaching positions in schools, in granting scholarships and free education, in allocating housing and agricultural land. Up till date, ethnic (and religious) groups claim the political-administrative control of their ancestral lands. Therefore, most Nigerians see it as legitimate that state and local governments favour the indigenous part of their population. The federal character policy[31] which was introduced by the Mohammed/Obasanjo's administration compounded the situation. The application of the federal character policy creates greater disunity. The application is selective[32] and has been criticised for breeding mediocrity. Appointments into key offices are not evenly distributed as they are

done in violation of the federal character formula. Appointments are dictated by the whims and caprices of the political leaders of the day. For instance the cut off mark for certain states in the 2013 for admission to the unity colleges in Nigeria was as low as 1 percent and as high as 39.5 percent for others.[33] A Nigerian is basically a citizen of his ancestral homestead, local government and state. He is an alien in other local government areas or other states; he may also be liable to 'deportation' to his home state.[34] Non-indigenes pay higher school fees and must obtain a higher cut off mark in order to be admitted to state-owned institutions and there are quotas and catchment basis in federal institutions as well. This policy has created indigene/settler schism, nepotism, ethnicism and false declaration of state of origin. This problem in most cases is subtle and subterranean, but in some cases has blown out into full-scale war in some areas such as the Plateau crisis and Ife/Modakeke crises. Most of this violence existed between completely different peoples such as the Hausa-Fulani/Berom (Jos, Plateau state), Itsekiri/Ijaw/Urhobo (Warri, Delta state), Jukun/Tiv (Taraba state), Ilaje/Ijaw (Ondo state); or between people of the same stock, language and creed Ife/Modakeke (Osun state), Erin Ile/Offa (Kwara state), Aguleri/Umuleri (Anambra state). Nepotism and ethnicism become the bye products of federal character. Individuals become parochial and unduly ethnicised as the statutory sanctioned way to advancement in the public realm is through the ethnic route. In a bid to qualify for the unusually great advantage granted certain states, individuals from other states who could pass off as indigenes of the "advantageous" state usually do so. It is not unusual for Nigerians to switch allegiance from one state to another depending on where the pendulum swings.

The issue of revenue sharing formula is another contentious issue. The policy of even progress and derivation was used between 1946-1967.[35] The military discontinued this with the Constitution (Distributable Pool Account) Decree[36], the Offshore Oil Revenue Decree[37], Constitution (Financial Provisions etc) Decree[38], Finance (Miscellaneous Tax Provisions) Decree[39] and similar decrees, which are now part of Nigerian law by virtue of section 315 of the CFRN 1999[40], gave a large chunk of the state revenue to the federal government and continually increases it in favour of the federal government with subsequent amendments.[41]

The Nigeria Police Force (NPF) is corrupt, inept and unresponsive to its responsibilities. It is monolithic, underfunded, ill-equipped and partisan.[42] The comments of Assistant Inspector-General of Police (AIG), Zone 6 Command, Jonathan Johnson on his visit to Akwa Ibom

State Police Command in Uyo is apt, "If you investigate our men, you will discover some are armed robbers. We are not contented with what we have; we go to the road to extort money from people, engage in illegal business, and liaise with armed robbers."[43]

The centralisation of the force through Police Act[44] and sections 214 (2) (a) and 215(2) of the CFRN 1999 is outdated and partly responsible for its inefficiency. The persistent clash between the state governors on one hand and the commissioners of police on the other hand shows the need to decentralise the police force. The recruitment policy of the force that preclude the engagement of experienced staff at middle and top echelon even when it is self-evident that NPF does not have these specialists leave much to be desired. It is obvious that the status quo in this regard is maintained because the mediocrity of the police force pays the ruling elite. The unintelligent force is less likely to investigate gruesome acts, prosecute or bring the ruling elite to book; easy to intimidate and used for illegal ends such as rigging election.

The military is another peculiar problem of Nigeria. The military have ruled for about 27 years out of the 54 years of independence. It left a deep imprint on the national psyche which includes violation of human rights, ouster clauses, retroactive legislation, ruling by fiat and Decrees, lack of accountability and institutionalisation of corruption; the Babangida and Abacha regimes are credited with institutionalising corruption.[45] It is important to state that despite the enactment of many statutes by successive administrations to curb unemployment[46], most of which were passed during the military administration, the achievement in this direction is dismal.[47] Others include refusal to obey court orders, gagging of the press such as Decree no. 4 of 1984, whereby it was an offense to publish articles likely to embarrass government officials even if the content is true. Most of the decrees passed by these repressive regimes are still in our statute books till date.[48]

Perhaps the most fundamental institution in any society is the judiciary.[49] The role of the Nigerian judiciary in ensuring justice is suspect. The judiciary had used the doctrine of *locus standi* to debar concerned members of the public from correcting social ills. *Locus standi* has been held to denote that a party has the legal capacity to initiate proceedings in a court of law and focuses on his aim to get his complaint before the court and on the issues he will be raising before it.[50] The Nigerian courts take a lifetime to decide cases. Unnecessary and inordinate delays (caused by the counsel, judges, litigants, law enforcement officers and witnesses) in courts made for protracted

litigations; this is further complicated by an unnecessary unwieldy hierarchy of courts and cumbersome procedural rules that serve as an incentive to unpardonable delays in the judicial process.[51] For instance in *Wakino v Ade John*[52] the case took eleven years in the High Court alone, due to series of adjournments. Also in *Ariori & Ors v Elemo & Ors*[53] the case took twenty two years to reach the apex court – the Supreme Court which ordered a trial *de novo* (meaning to commence the hearing of the case altogether at the court of first instance where it was first instituted and heard by the High Court). The legal and judicial system where justice is delayed could not foster peace, unity and progress. The refusal of the successive governments to obey the pronouncements of its own courts of law, once it is not palatable hit at the foundation on which the Nigerian state rests[54]; it undermines peace, unity and security of the state and the trust reposed by the citizenry in the state.

Also in certain instance the discretion of the court was not exercised judiciously. For instance, the High Court presided over by Justice Mohammed Talba sentenced one Yusuf to only two years' imprisonment with an option of N750, 000 fine for conniving with others to defraud the Police Pension Office and pensioners of N27.2 billion.[55] Former Governor Lucky Igbinedion, who was charged with embezzling 2.9 billion naira, pleaded guilty to one count of corruption in a plea bargain at a Federal High Court in Enugu. He was to refund only N500 million and forfeit three properties, based on the ruling of the presiding judge, Justice A. Abdul-Kafarati.[56] Justice Awokulehin discharge of James Ibori and his subsequent conviction in United Kingdom on similar charges was bitterly criticised as improper exercise of discretion by lawyers and laymen alike.[57] Contrast these with the case of three poor persons who were jailed for six months for stealing two tubers of yam.[58] The jurisdiction of the Federal High Court, though statutorily prescribed, was decided differently in *Abiola v Federal Republic of Nigeria*[59] and *Ibori v Federal Republic of Nigeria*.[60]

There is also confusion in the Nigerian Constitution. Section 10 of the 1999 Constitution of the Federal Republic of Nigeria provides that: "the Government of the Federation or of a State shall not adopt any religion as state religion". Also Section 38 of the 1999 Constitution of the Federal Republic of Nigeria protects the right of every Nigerian to freely choose their religion as well to manifest his/her religion in worship, teaching and practice. However, the same constitution provided for the establishment, composition and jurisdiction of the Sharia Court of Appeal of a State and the Sharia Court of Appeal of the Federal Capital Territory in sections 275 and 260, respectively

and these legal bodies have an overwhelming religious undertone. There is also the provision that the Court of Appeal should consist of judges 'not less than three should be learned in Islamic personal law'[61].The federal, state and local governments also send persons on Muslim and Christian pilgrimage every year despite the constitutional provision. Then, aren't citizens, practicing other religions apart from Islam and Christianity entitled to sponsored pilgrimage too?

Religion is highly politicised leading to major religious upheavals. The culprits and masterminds of these conflicts are not brought to book in most cases. Notable among such crises are the Maitatsine religious disturbances in parts of Kano and Maiduguri in the early 1980s; Jimeta-Yola religious disturbances (1984), and Zango-Kataf crises in Kaduna state (1992). Others are Kafanchan College of Education Muslim Christian riots; Kaduna Polytechnic Muslim-Christian skirmishes (1981-1982); and the cross vs. the crescent conflict at the University of lbadan (U.I.) (1981-1985)[62], Ogoni crisis (1994), Aba (2000), Onitsha (2001), Numan (2004)[63]; Yet other early ethno-religious conflicts include the Bulumkutu Christian-Muslim riots (1982); Usman Danfodio University, Sokoto (1982); and the Muslim-Christian Clash during a Christian procession at Easter in Ilorin, Kwara state (1986)[64] , among other such events. Despite all these, the author is not aware of the prosecution and conviction or otherwise of the kingpins, mastermind and the major actors of these crises.

It is trite then that in the face of gross violation of the constitution, abuse of the statutory provisions and the attendant injustice, the peace and unity of the country is compromised. The above listed problems coupled with youth unemployment have in part given way to purposeless *boko haram* induced terrorism which has proved intractable. In the light of the aforestated the following recommendation is hereby proposed.

Recommendations

In spite of the problem mentioned above the country have survived traumatic experiences such as the civil war, religious, tribal and civil strife, annulment of June 12 election, terrorist attacks and banditry. Thus, the following recommendations which could set the country back on the way to recovery are discuss hereunder.

There is a need for psychological re-orientation, whereby the value system which place emphasis on wealth regardless of the mode of accumulation would be discouraged. Transparency and

accountability should be encouraged through the law and other social parameters.

The Nigerian state has moved from the "era of the minorities into era of the marginal"[65], thus creation of more states should not be encouraged rather we advocate that existing states should be merged to form economically viable entities based on linguistic, cultural and historical factors rather than those that depend on the federal government for handout.

A parliamentary system of government is preferable to the current presidential system for the following reasons; it is cheaper to run, flexible, abhors a winner take all as no single tribal, region or religious group could have a clear majority; the president and the commander-in-chief of the Armed Forces is a revered person who is not a politician. Such a person is capable of reconciling differing factions in the national interest; it makes for a viable and strong opposition which provide an alternative agenda.

The law should provide for a new political culture that would include the declaration of assets of public office holders publicly at the beginning and end of their tenures.

Public institutions should be reformed especially the police force and the judiciary. The law should provide for state police to make provision for an organisation that would be a watchdog over the police like the internal department in Britain.

The reformation of the judiciary is fundamental. There is a need to change the substantive and procedural laws that allow cases to go on for many years. The list of those shortlisted for judicial posts should be made public initially, for the public especially the bar, to send in petitions on the proposed candidates with evidence which would be investigated to determine their suitability or not.

The federal government needs to devolve more powers to the states or regional governments as the case may be. Most of the powers granted exclusively to the federal government in the exclusive legislative lists[66] are not necessary.[67] With this devolution certain responsibility would be passed to the state/regional government, thus leading to resolution of the thorny issue of revenue allocation.

The civil service which is the focal point of the conceptualisation, formulation and execution of government policies should embrace meritocracy. The achievement of the First Republic regional governments could not be divorced from efficient, honest and highly motivated civil service.

Nigeria is a multi-religious society. Religion should be regarded as a private matter and state funds should not be used for promotion

of any religion whatsoever. Any instigator of religious or civil strife should be prosecuted according to the ordinary law of the land.

The national character factor should be used judiciously. There must be a standard to which no one should fall below. The Nigerian state may need to pay for the remedial classes for educationally backward states for instance, rather than allowing a state to enroll a pupil with 1% score while others who make 69% may not qualify. There is a need to promote an authentic federal character rather than the current federal mediocrity.

Youth unemployment should to be arrested through the creating of enabling environment for the private sector, creation of skill acquisition centres and the re-designation of the educational curricula to make it more responsive to the new global economy through the enactment of apposite laws backed by the appropriate enforcement machinery.

Conclusion

In order to foster peace and unity the proper and judicious use of the law is important. Clear laws should be made, and enforced by an impartial law enforcement officers and judiciary. The law should create economic and social justice. The law should make the state responsible for provision of infrastructure, education, and health service to her citizens.

The Nigerian elite should drop the garb of commission agents, traders and parasitic bug on the polity. Nigeria's Coat of Arms bears the words, "Unity and Faith, Peace and Progress". One fundamental and indispensable word is missing from that coat of arms and this may be responsible for Nigeria's current plight. That word is justice. Justice through the law.

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