
Addressing Minority Questions by Legal and Political Means: The Nigeria Example**Agbo Festus Okpoto***

LL.B. (Benin), LL.M. (Ibadan), BL; ACI Arb, Lecturer, Nigerian Law School, Yenagoa Campus, Bayelsa State; formerly, Senior State Counsel, Ebonyi State Ministry of Justice, Abakaliki, Nigeria

Corresponding authorAgbo Festus Okpoto***Article History***Received: 12.09.2018**Accepted: 26.09.2018**Published: 30.10.2018*

Abstract: The existence in a country of groups of people that radically differ in culture, population and ethnicity may almost always generate fears of domination of minority groups by the majority groups. This paper examines the legal and political steps taken by the Nigerian Government to protect the interests of minority groups within its borders. Efforts have been made to discuss such steps as: state creation; fundamental human rights; federal character; resources derivation, allocation and utilization; and commissions set up to cater for the welfare of the minority groups. A brief discussion of minority questions on international plane is, also, undertaken. In order to achieve the above stated goals, reliance has been placed on the Constitutions of Nigeria 1979 and 1999, statutes, judicial authorities, international legal instruments and practical experiences. This is followed with recommendations and conclusion.

Keywords: Nigerian Government, judicial authorities, international legal instruments.

INTRODUCTION

Africa is generally a plural and heterogenous society and each ethnic group seeks not only to manage its internal affairs, but also to protect its interests within a unified system of government which might have been created for the country within the continent by the colonial masters.

British colonial government had a preference to a unitary system of government as against a federal system [1]. Colonial Government was concerned in terms of a centralized authority flowing from the imperial to a single governor as the sole representative of the monarch for the exercise of the entirety of her powers and jurisdiction within the dependency [2].

The fear of domination by one group of the others is heightened in situations where there was no negotiation or agreement prior to the nations living together in one sovereign state. Nigeria is a prime example of this. Whereas Canadian and American Federations were results of negotiations and informed consent to live together, Nigeria as a state is an artificial creation of British imperial powers. In 1914, Lord Frederick Lugard lumped together the northern and

southern protectorates to form the present Nigeria State consisting of over 350 nations and languages. Despite the heterogenous nature of the Nigerian society, a unitary system of government was employed for its governance. Towards the years of independence, it became apparent that unitary system of government was unsuitable for Nigeria. A federal system of government was elected by the people. In Nigeria, many nations of diverse cultures, languages, religions and ethnicities have been forced to live under one sovereign state; they have got to device means of living together in peace, in such a way that genuine interests of various nations that make up the groups, large and small shall be protected. Legal and political steps taken to address minority questions in Nigeria are considered below.

State Creation

The Richard Constitution of 1946 introduced federalism in Nigeria. However, Nigeria practised a defective and fallible federation. It consistently undermined one of the most cardinal philosophical principles of federalism. This basic principle posits that beyond size, territoriality and constitutionality, the plurality and heterogeneity of the federal constituents

¹Akande, J, 1991, Constitutionalism and Pluralism, in Essays in Honour of JUDGE TASLIM OLAWALE ELIAS Vol. 11, B. A. Ajibola and E.G. Bello (eds.), p. 65.

²Nwabueze B. O., 1973, Constitutionalism in the Emergent States, London: Fairleigh Dickson University Press, pp. 23-30.

must be recognized [3]. The relative autonomy, independence and self-determination of these units must be appreciated and guaranteed in clear terms, to assure their general welfare. It is only in these terms that it is possible to objectively evaluate the relevance of a federal arrangement for all the citizens [4]. One of the ways to achieve this is state creation.

In Nigeria, state creation is *prima facie*, a constitutional issue and the nature of its entry into the purview of the country's politics makes it patently so. In other words, the 1946 Richards Constitution introduced the federalization of Nigeria which was consummated and deepened respectively by the 1951 and 1954 constitutional changes which regionalized both politics and the bureaucracy of the regions: East, North and the West. Size, territoriality and economic/administrative advantages for example, have tended to function as factors encouraging and promoting secession. Since unification in 1914, the North has always exploited its large population, enormous territorial size and its so-called disadvantaged status, through the Federal

Character Principle to the great disadvantages of other regions. Fear of insecurity was negatively exploited by Mid-Western, Middle-Belt and Cross-River and Rivers minorities. The intense agitations from excluded minorities from each region resulted in the demand for separate states as the most effective solution to the menace of majority domination in the circumstances. In the West, Chief Anthony Enahoro, an Action Group leader, demanded a Benin-Delta State in 1951, a demand reaffirmed in 1952 and 1953 by the Action Group, confirmed in 1955 by a resolution of the

Western House of Assembly, and finally implemented by the creation of the Mid-West State in 1963.

In the North, the leaders of United Middle-Belt Congress (UMBC), an Action Group alliance, demanded a separate Middle-Belt State out of the Northern region. In the same vein, a separatist Bornu Youth Movement demanded a separate Bornu State. Both requests were refused by the Northern People's Congress-led Northern Regional Government for its bias for northernisation policy guided by its ethos of "One North, one Destiny, One Constitution" [5]. In the East, an Action Group supported United National Independent Party (UNIP), formed in 1951 by National Council of Nigeria and Cameroon dissidents, intensively campaigned for the creation of a separate Calabar-Ogoja-Rivers State to serve the interests of Eastern minorities from those areas. While the Eastern and Northern regions supported the creation of Mid-West State, they did not accede to the creation of any other states out of their respective regions. So far, the only state creation carried out by the civilian regime in Nigeria was the excision of the Mid-West Region from the defunct Western Region. This was made possible by the collusion of the coalition parties – NPC and NCNC, which controlled the Federal Government in the First Republic, 1960–1966 [6].

State creation aims at averting cultural domination and granting autonomous territorial units for governance which would provide the necessary and sufficient opportunity for self-determination. It is also a process of nation-building. Military involvement with state creation began during the tenure of General Yakubu Gowon, 1966-1975. He reversed the Unification Decree that the Ironsi Regime introduced at the wake of the first Coup d' *et al.*, of January 1966. By Decree No. 14 of 1967 (States Creation and Transitional Provisions Decree, 1967), a 12-state federal structure was born. Though he promised creating more states in his October 1, 1970 Independence Anniversary Speech, he could not fulfill the promise until he was forced out of office in July,

1975. The Irikefe Panel was set up in 1975 by the Mohammed/Obasanjo regime to examine the desirability or otherwise of creating more states. A total of 31 requests were received by the panel. However, the regime only created 7 more states then, bringing the number of states to 19 in 1976. The agitation for more states continued. Hence in the Second Republic, 1979-

³Alexander Hamilton and James Madison's Federalist Papers, a compilation of 85 essays published in New York City, aimed at convincing Americans to vote for ratification of the American Federal Constitution 1787. See Jackson, K. T., 1995, *The Encyclopedia of New York City: The New York Historical Society*, Yale: Yale University Press, pp. 194-196; Aguda, O. O., 2000, *Understanding the Nigerian Constitution of 1999*, Lagos: MIJ Professional Publishers Ltd, pp. 43-63. Rotimi, S., 2009, *Federalism in Africa: The Nigerian Experience in Comparative Perspective*, *Ethnopolitics*, pp. 67-86, at <https://doi.org/10.1080/17449050902738846> sourced on 31 July 2018.

⁴Eteng, I. A., 1996, *Minority Rights under Nigeria's Federal Structure*, being Proceedings of the Conference on Constitutions and Federalism held at the University of Lagos, Nigeria, 23-25 April 1996, pp. 112-113. See also Awa, E. O., 1996, *Issues in Federalism*, Benin City: Ethiope Publishing, Chapter I cited by Eteng, I. A., *op. cit.*

⁵Eteng, I. A., *op. cit.*, pp. 123-124.

⁶Yaqub, N. O., 1996, *State Creation and the Federal Principle*, being Proceedings of the Conference on Constitutions and Federalism, held at the University of Lagos Nigeria, 23-25 April 1996, pp. 190-193.

83, the National Assembly received requests for some 53 new states to be created. Except the Unity Party of Nigeria, each of the then existing political parties made proposal for states creation as follows: National Party of Nigeria-25; Nigerian People's Party-21; Great Nigeria People's Party-27; People's Redemption Party-24. This would have brought the number of states to 97. However, the Conference Committee of the National Assembly recommended 15 for referenda using constitutional stipulation. This was not to be because the Second Republic was overthrown in 1983.

In 1986, the Babangida Administration set up its Political Bureau to consider requests for more states creation. In spite of many requests received by the Bureau, the members were only unanimous in recommending the creation of two more states, namely: Katsina and Akwa-Ibom. The Babangida Administration created those two states in 1987 as recommended by the Political Bureau, thus bringing the number of states to 21. Again in 1991, President Ibrahim Babangida created 9 more states: Delta, Enugu, Kogi, Kebbi, Jigawa, Taraba, Abia, Osun, and Yobe. The number of states rose to 30.

During Abacha Administration the requests for creation of more states were renewed. The Constitutional Conference which sat between 1994 and 1995 recommended that since it had no mandate to create states, the regime should consider it. In 1995, the Abacha regime inaugurated the Committee on State Creation, Local and Boundary Adjustment chaired by Chief Arthur Mbanefo. The Committee visited 24 states out of 30 and received 65 requests for new states. In his 1996 Independence Anniversary Broadcast, General Abacha created additional 6 states, bringing the total number of states to 36 [7].

The agitation for more states will ever continue as long as there is Nigeria. Interestingly enough, there is provision for creation of more states in the 1999 Constitution of the Federal Republic of Nigeria [8]. The only problem is that its provisions are harder to fulfill than for a horse to pass through an eye of the needle.

Commenting on the 1979 Constitution [9] provisions for State creation, which is in pari material with its 1999 counter-part, James Read writes, "If the draftsman was instructed to produce a section which

⁷Yaqub, N. O., *op. cit* p. 194. See the First, Part 1 to the Constitution of the Federal Republic of Nigeria for the States and their Local Governments.

⁸Section 8 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999.

⁹Section 8 of the Constitution of the Federal Republic of Nigeria 1979.

would effectively prevent any future tempering with the present states, then he has succeeded" [10]. In a similar vein, Dr. Akinola Aguda in agreeing with Read's position writes: "Indeed it was the view of the then Head of State, General Murtala Mohammed, that the exercise of creation of state was a once-and-for-all exercise" [11]. Creation of more states, according to the agitators takes care of the problem of neglect, discrimination, domination and injustice perpetrated by the majority against the minority. If Nigerians are given the opportunity, they will want more than 36 additional states.

However, it may not be unfounded to state that we may have to live in the present state structure in Nigeria for God-knows-how-long given that it is almost impossible to secure the necessary majority in the National Assembly, States' Houses of Assembly and in the Referendum to create new states under the present democratic and constitutional dispensation. Neither do we pray for military regime wherein state creation is made easy [12].

Fundamental Human Rights Provisions

In 1957, the Willink Commission, headed by Harry Willink, then the Vice Chancellor of University of Cambridge, was set up to probe into the fears of the minorities in the Nigerian Federation. In the wake of setting up the Willink Commission, there were agitations for the creation of a state/region in each of the then existing regions: from the North, there was a demand to create the Middle-Belt Region/State; from the East, the demand for the creation of Calabar-Ogoja-Rivers State; and from the West, apart from the demand by the region's minorities for the creation of the Mid-West State, there were also demands by the Yorubas for Central Yoruba State, to cover the Provinces of Oyo and Ibadan, and Ondo Central State to cover Ondo Province only. The finding by the Willink Commission indicated that the minorities really had genuine fear about fair deals and treatment; but apparently conscious that granting all or some of the requests for new state would further delay the Independence date, the Commission did not recommend the creation of any new state. However, it favoured inclusion of the

¹⁰Read, J., 1979, The New Constitution of Nigeria 1979: The Washington Model?, *Journal of African Law*, Vol. 23 No. 2, p. 131 at p. 163.

¹¹Aguda, J. A., 1982, The Legal Implications of the Creation of more States in Nigeria, in *Nigerian Current Law Review*, T. A. Aguda, and J. Akande, (eds) Lagos: NIALS, p. 7.

¹²The present 36 states with 774 Local Governments and over 3000 wards with councilors have reasonably taken care of minority fears for domination. We should not by any means invite the military into our body politics.

fundamental rights and special organs to address minorities issues [13].

The major criticism usually advanced against the inclusion of fundamental rights in the constitution is that constitutional guarantees are grossly ineffective. However, it has been written by an eminent jurist that, "no knowledgeable person has ever suggested that constitutional safeguards provide in themselves complete and indefensive security. But they do make the way of the transgressor, of the tyrant, more difficult. They are, so to speak, the outer bulwarks of defence" [14]. Such fundamental rights are usually patterned after the Universal Declaration of Human rights, 1948 with some modifications. In every country, careful consideration is given to the form and content of the bills of right and minority group attach great importance to them as safeguards against abuse of power. The inclusion of bills of right in the constitution of African States is traceable to a desire to afford concrete reassurance to minority groups in Nigeria. Chapter IV of the CFRN 1999 provides for fundamental human rights [15]. We shall only Concentration shall be on only some of these rights that bear special relevance to the protection of minorities' interests in Nigeria.

Freedom from Discrimination

Section 42 of the Nigerian Constitution, 1999 [16] provides against discrimination. Section 42 (1) provides:

A citizen of Nigeria of a particular community ethnic group, place of origin, sex, religion or political opinion shall not by reason only that he is such a person-

(a) be subjected either expressly by, or in the practical application of any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions, or political opinions are not made subject...

However, nothing in subsection (1) of the section shall invalidate any law by reason only that such law imposes restrictions respecting appointment of any person to any office under the State or as a member of the armed forces of the federation or a member of the Nigerian Police Force or to an office in the service of a

body corporate established directly by any law in force in Nigeria [17].

Similarly, discrimination may be permitted where special provisions are made for the less advanced groups to enable them catch up with others. This guarantees the attainment of social harmony which is the end sought by these non-discriminatory provisions. The cardinal point in non-discriminatory provision is to treat persons in similar circumstances similarly.

Right to Freedom of Movement

Every citizen of Nigerian has constitutional right to move freely within Nigeria and to take up residence in any part of Nigeria. Section 41 of the CFRN 1999 [18] provides for freedom of movement. However, the issues of regionalism, statism and religion have subtly interfered with freedom of movement of Nigerians. Be that as it may, the Constitution guarantees the minorities the right to move freely within Nigeria and to live and do business in any part thereof, without distinction as to place of origin or ethnic group.

Freedom of Association

Section 40 CFRN 1999 [19] provides that every person shall be entitled to assemble freely and associate with other persons and in particular, he may form or belong to any political party, trade union or any association for the protection of his interests. Apart from the provision of the section touching on the power of INEC to derecognize political parties, it is submitted that any association formed to protect the interests of the members, which association or assembly runs counter to the public policy, security or peace of the Nigeria State shall not stand in view of section 45 of the Constitution [20]. In *Alhaji Balarabe Musa v People's Redemption Party* [21] where the respondent Party suspended the applicant for having meeting with other governors described as "progressives", the court held that "nothing stops the applicant from going where he likes, when he likes, how he likes within the law. If he should decide to attend meeting with anyone whatsoever no one has the right to stop him physically".

¹³ Yaqub, N.O., *op. cit.*, p. 191.

¹⁴ Cowen, 1900, *The Foundation of Freedom*, P. 119 cited in Akande, J., *op. cit.*, p. 167.

¹⁵ See, also, Chapter IV of the 1979 Constitution for similar provisions.

¹⁶ Section 33 of the 1979 Nigerian Constitution.

¹⁷Section 42 (3) CFRN 1999.

¹⁸See section 38 of the 1979 Nigerian Constitution for similar provisions.

¹⁹Section 37 of the 1979 Nigerian Constitution.

²⁰ See for instance the Students' Union Activities (Control and Regulation) Act, Laws of the Federation of Nigeria 2010, which in its section 1 (a), (b) and (2) outlaws any association on campus whose activities are inimical to public safety, public morality and public security.

²¹(1981) 2 N.C.L.R. p. 734 at p. 768.

Adequate Compensation for Compulsory Acquisition of Property

As a general rule, section 44(1) of the CFRN 1999 [22] provides that no person shall be deprived of his property or interest therein (movable or immovable property) without prompt compensation or right of access to court to determine the value thereof. The acrimony and bitterness generated in some parts of Nigeria over the issue of abandoned property after the Nigerian Civil War (1967-1970), is a very good example of the issue as a factor in the struggle of the minorities for social justice. The Igbos were forced, by reason of the Abandoned Property Decree, to forfeit choice properties and monies in banks in Rivers State, especially in Port Harcourt [23]. It, also, highlights the care and need for balancing the interests of both the majority and the minority to ensure a stable Federation [24]. Any law which dispossesses individuals or groups of their property rights without adequate compensation is unconstitutional.

Right to Freedom of Thought, Conscience and Religion

Section 38 of the CFRN 1999 [25] provides for freedom of thought, conscience and religion including the right to change religion or belief and freedom to propagate and manifest one's religion or belief in worship, teaching, practice and observance, either alone or in community with others in the public or private. Section 10 of both the 1999 and 1979 Constitutions of Nigeria prohibit state religion. Nigeria does not have any official state religion. However, in practice, it may be difficult to fulfill the provisions of the freedom to religion in some core muslim communities where there is always high degree of intolerance to other religions, especially Christianity. Again, some politicians exploit religious issues to their selfish political ends. This accounts for numerous religious riots in various parts of the country, especially since the return to democratic dispensation in 1999. Generally, however, no person or group of persons is compelled to observe any particular religion by the government. This guarantees the minorities and the majority alike, the freedom to thought, conscience and religion.

²²Section 40 of the 1979 Nigerian Constitution. See section 44 (2) of the 1999 Constitution of Nigeria which provides for exception to the general rule.

²³Abandoned Property (Custody and Maintenance) Edict No. 8 of 1969, sections 2 and 4, and the Rivers State Abandoned Property Authority created thereunder; *Ude v Nwara* [1993] 3 NWLR (Pt. 278) 638 at 641; *C. D. Olale v Ekwelundu* [1989] NWLR (Pt. 115) 326.

²⁴Akande, J. ., *op cit.*, p.669.

²⁵Section 35 of the 1979 Nigerian Constitution.

Federal Character Principle

As its 1954, 1960 and 1963 counterparts, the 1979 Constitution of Nigeria was a reflection of the federal or pluralistic character of the Nigerian political community [26]. Section 14(3) of the 1979 Constitution [27] of Nigeria provides:

The composition of the government of the federation or any of its agencies and the conduct of its affairs shall be carried out in such manner as to reflect the federal character of Nigeria and the need to promote national unity and also command national loyalty and thereby ensuring that there will be no predominance of persons from a few states or a few ethnic or other sectional groups in that government or any of its agencies.

Thus, by the above provision, the national government is expected to take cognisance of the pluralistic nature of the Nigerian society in its distribution of the rewards or dividends of the federation. The term, "Federal Character", is one of the phrases invented by the Constitution Drafting Committee (CDC) inaugurated by the late General Murtala Mohammed on October 18 1975. It was in the course of debate on the report of the Sub-Committee on Executive and Legislature which dealt with how to promote national loyalty in a multi-ethnic society that the phrase was coined. In the course of the debate, one of the groups of CDC insisted that, "There had in the past been inter-ethnic rivalry to secure the domination of government by one ethnic group or a combination of ethnic groups to the exclusion of others. It is, therefore, essential to have some provisions to ensure that the predominance of persons from a few states or from a few ethnic or other sectional groups is avoided in the composition of the government or appointment or election of persons to high offices in the states" [28].

It was during the course of heated debate among various CDC groups that the term 'Federal Character' emerged as the term of compromise accepted by most members. According to CDC Report:

²⁶ Akpan , M. E., 1984, *Constitution and Constitutionalism: An Analysis of the Basic Principles of the Federal Constitution of Nigeria 1979*, Lagos: PAICO Ltd, pp. 34-35.

²⁷See section 14 (3) of the CFRN1999 for an equivalent provision.

²⁸Report of Constitution Drafting Committee 1977, Vol. 1, Lagos, p. IX cited in Afigbo, A. E., 1986, *Federal Character: Its Meaning and Histroy*, Owerri: RADA Publishing Co.

The term Federal Character of Nigeria became accepted among various speakers and it seems to embody the ideas which had motivated the arguments of those who expressed views on the subject. Thus, it was widely acceptable to most members that important bodies like the FEDECO should reflect Federal Character of Nigeria [29].

To avoid vagueness of the phrase, the CDC defined Federal Character as:

The distinctive desire of the people of Nigeria to promote national unity, foster national loyalty and give every citizen of Nigeria a sense of belonging to the nation notwithstanding the diversities of ethnic origin, culture, language or religion which may exist and which it is their desire to nourish, harness to the enrichment of the Federal Republic of Nigeria [30].

This phrase has found application in many areas of our national life. The rationale is that, by a proper application of the Federal Character doctrine, all ethnic-regional areas, groups and communities will be given opportunities to participate in the socio-economic and social-political life of the country. In the spirit of Federal Character, each State of Nigeria is entitled to elect 3 senators to represent them in the Second Chamber of the National Assembly [31]. Government institutions: academic, social and economic, are not concentrated in a particular state or region. In university admissions, preference is given to candidates from less educationally disadvantaged states. In appointing Federal Ministers, each State must have at least a minister. The President and Vice-President; Governor and Deputy Governor; Senate President and Deputy Senate President; Speaker of the House of Representatives and Deputy Speaker, etc- these pairs almost always come from different states or geopolitical zones [32].

²⁹ Ibid, pp. IX – X. See, also, Aguda, O. O., 2000, Understanding the Nigerian Constitution of 1999, Lagos: MIJ Professional Publishers Ltd, pp. 59-63.

³⁰ Ibid, p. X. See also, Mbachu, O., 1997, The Anguish of Federalism in Nigeria, C. A., Ndo and C. E. Emezi (eds), Nigerian Politics, Owerri: CRC Publications, pp. 166–168.

³¹ Section 48 CFRN, 1999. See section 44 of the 1979 constitution of Nigeria which provided for 5 senators from each State.

³² Equivalent arrangements in respect of Governors, Deputy Governors; Speakers, Deputy Speakers of States Houses of Assembly.

It must be accepted that although the doctrine of federal character is a laudable mechanism for the protection of minority interests, its operation in Nigeria has been problematic due to two main factors. First, some ethno-geographical areas are relatively more advanced in urbanization and formal western education than others. As a result, they are more predominant in federal institutions and agencies, especially in bureaucratic and economic positions. This is the case with the Yorubas of Western Nigeria and to a reasonable extent, the Igbos of Eastern Nigeria. The second factor is that some states or ethno-geographical areas are large in population while others are small. Due to their size, small areas and communities tend to lose in competition and struggle for federal power, status and influence. The North with its intimidating size and population is almost always the winner here. Yet there is a group that calls for removal of federal character in the Nigerian Federation. It has been said that:

The concepts of federal character, quota system, disadvantaged and advantaged states and the notion of catchment areas for university—even if politically defensible as a short-term measure, are clearly undemocratic. They also work against the pursuit of excellence and national entity. In the long run, these principles of national engineering will result in a cult of mediocrity and alienation among those who felt cheated and discriminated against through no fault of theirs [33].

To the author of the above quote and others who share his view, federal character principle discriminates against qualified individuals who are denied opportunities in preferences to others only on basis of places of origin. To balance between these two conflicting views, the doctrine should be applied as an affirmative action, a mechanism to redress deficiencies without promoting the entrenchment of such deficiencies. Its practice should be carried out without prejudice to the criteria of merit, excellence and achievement [34].

³³ Uzoigwe, G. N., 1989, History and Democracy in Nigeria being Presidential Inaugural Lecture delivered at the 34th Congress of the Historical Society of Nigeria at the University of Benin, Benin City, Nigeria on May 16 1989, p. 22.

³⁴ Akande, J., *op. cit.*, p. 666. See specifically section 153 (1) (c) CFRN, 1999 for Federal Character Commission and Part 1 Item C, Paragraphs 7-9 of the Third Schedule to the CFRN 1999 for its composition and functions.

Resources Derivation, Allocation and Utilization

Section 162(1) of the CFRN 1999 provides that 'The Federation' shall maintain a special account to be called 'Federation Account' into which shall be paid all the revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory Abuja. Subsection 2 provides that the President, upon receipt of advice from the Revenue Mobilization, Allocation and Fiscal Commission, shall table before the National Assembly proposal for revenue allocation from the Federation Account and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density: provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources. Subsection 3 provides that 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 on such terms and in such manner as they may be prescribed by the National Assembly [35].

This paper does not intend to discuss this sub-topic exhaustively. Suffice to say that the fiscal centralism in Nigerian Federalism has been the frequent source of conflicts between the centre and the federating units. In an ideal federal system of government, the regions take greater part of the natural resources derived from their areas, but the reverse is the case in Nigeria. The 13% derivation formula in section 162 (2) should be the minimum accruable to the places bearing the natural resources. It is this issue of control of natural resources that is almost tearing Nigeria apart since the discovery of oil in the Niger-Delta minority enclave in the late 1950s, with the minority question being almost wholly concentrated there. Since the 1990s, there has been a renewed hostility in the Niger-Delta region, leading to the execution of Ken-Saro Wiwa and other Ogoni leaders on treason charges

because they attempted at secession. The attacks on oil installations and oil company staff, including kidnapping have been worse since 1999 when the present democratic dispensation came into being. The federal government has been maintaining military presence in the Niger-Delta. In 1999 and 2009, it launched major military assaults on the militants, which led to the displacement of many innocent civilians, many of whom were killed. The issue of resource derivation, allocation and utilization led to the break-up of discussion at the National Political Conference in 2006. Delegates from Niger-Delta Region pushed for an increment to 25% of the derivation formula accruing to them from the crude oil [36].

It may be reasonable to say that the 13% derivation fund to the minority oil producing states is a legal protection in their favour. However, it is not adequate given the environmental degradation to which the inhabitants are subjected. Efforts should be made to right these wrongs by increasing the derivation principle. Between 1953 and 1959, the derivation principle was applied 100 percent. At Independence, with the growing importance of oil, the principle was applied on a 50–50 percent basis. In 1975, the Obasanjo military regime reduced the revenue accruable to the ethnic minorities to 20%, as oil easily became Nigeria's basic economic mainstay and the main source of wealth for the violently competing ethnic majority groups and their ruling elites. Under Shagari administration, the allocation was reduced to 2 percent, and further cut to 1.5 percent by the Buhari regime and then later increased slightly to 3 percent by the Babangida administration [37].

Today, the derivation is 13 percent. If it was 50 percent at Independence, it can, also, be reviewed upwards by the current administration if the Federal Government resolves to do it [38]. This will give more legal and fiscal protection to the minorities under the Nigerian Federation.

Creation of Commissions and Organs to Carter for Minority Question

To take special care of the minority issues, the 1957 Willink Commission which probed into minority fears, recommended in its 1957 Report, the creation of

³⁵ See generally sections 162-168 of the CFRN 1999 for details on public revenue. See also section 313 of the Constitution which provides for use of revenue allocation formula in force between January 1 and December 31, 1998 pending any Act of the National Assembly on revenue allocation system. See, also, Onimode, B., 1996, Resource Derivation, Allocation and Utilization being a Paper presented at the Conference on Constitution and Federalism, University of Lagos Nigeria, 23-25 April, 1996, pp. 169-182.

³⁶ By the provision of section 44 (3) of the CFRN 1999 minerals oils and gas under or upon any land in Nigeria, or in, under or upon territorial waters... shall vest in the Government of the Federation.

³⁷ Eteng, I. A. op. cit, p. 138.

³⁸ The Citizen online, Buhari Promises to Reconsider 13% Derivation Formula for Oil Communities, thecitizenng.com/buhari-promises-to-reconsider—13-derivation-formula-for-oil-communities, accessed on 31 July 2018.

organs to take special care of minority questions. Pursuant to that recommendation, the Niger Delta Commission [³⁹] was created. It was to take care of the development need of the region. Next, was OMPADEC, with its headquarters at Port-Harcourt. It was to administer the derivation allocation fund to the region under the Babangida regime. Under the Obasanjo civilian administration, the Niger-Delta Development Commission (NDDC) was created with broader mandate to undertake the development of the oil producing states, most of which belong to minority ethnic groups. The NDDC, more than any of the Commissions before it has shown its presence in terms of road construction, infrastructural development, transportation, etc. The late President Yar'Adua set up the Niger-Delta Technical Committee which produced the Niger-Delta Master Plan for the thorough development of the region. The administration also created the Ministry of Niger-Delta Affairs which aims at tackling the most pressing issues facing the region—want of development and environmental degradation.

All these are aimed at protecting the minority interests of the oil bearing communities inhabiting the region.

Minority Questions on International Plane

The term 'minorities' is not defined in the major instruments of international law even though concerns with rights of minorities have tasked the United Nations from its inception. In 1950, the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities attempted unsuccessfully at advancing a definition of minority. It suggested that:

The term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population; such minorities should properly include a number of persons sufficient by themselves to preserve each traditions or characteristics; and such minorities must be loyal to the state of which they are nationals.

A subsequent attempt by the Special Rapporteur of the Sub-Commission, Professor Capotori defined minority as:

A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members-being nationals of

the states possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language [40].

After the World War I, various attempts were made at settlements following the collapse of the German, Ottoman, Russian and Austria Hungarian Empires and the rise of a number of independent nation-based states in Eastern and Central Europe to protect those groups to whom sovereignty and statehood could not be granted. However, the scheme of protection did not work well for various reasons ranging from the sensitivities of the newly independent states to international supervision of minority issues, to the overt exploitation of minority, issues by Nazi German in order to subvert neighboring countries. After the World War II, attention shifted to protecting individual human rights, though various instruments creating those rights also contained minority protections. In 1947 the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities was established [41]. Minority Protection is essentially a group right accorded to a group of people usually small in terms of population, culture, language and religion within a state. The International Covenant on Civil and Political Rights, 1976 provides for minority protection in its Article 27. It provides:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

In the *Lubicon Lake Band case*, the Human Rights Committee condemned the expropriation of the Band Territory by the Provincial Government of Alberta, as a violation of minority Article 27. In a similar vein, the International Court of Justice, in its advisory opinion on the legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970), held such stay illegal and that South Africa was under obligation to withdraw its administration from Namibia immediately, and put an end to its occupation

³⁹Uwechue, R., 1969, Reflections on the Nigerian Civil War - Facing the Future, London: O.I.T.H., p. 63.

⁴⁰ Atsenua, A. 1999, Human Rights Protection of Vulnerable and Marginalized Groups in A. O. Obilade (ed), Text for Human Rights Teaching in Schools, Lagos: CRP, p. 154 at 237.

⁴¹ Shaw, M. N., 1997, International Law, (4th ed.), Cambridge: OUP, pp. 218-219.

of the Territory [42]. These two cases show that minority issues are closely related to the question of the people's right to self-determination.

After the World War I, the victorious powers and the new League of Nations sought to address minority situation. They had to deal with their continuing presence in states of minorities which had frequently been abused in ways ranging from economic discrimination to pogroms and other violence that could implicate other states, spill across international boundaries and lead to war, the immediate trigger for the outbreak of the First World War in the tormented Balkans still fresh in memory. The proposal by President Wilson of America for a Covenant of the League of Nations to include norms governing the protection of minorities in all members of the League was rejected. Discrete international arrangements were made to handle discrete problems of minorities in particular States of Central-East Europe and the Balkans rather than a universal treaty system. This compromise led to the regime of Minorities Treaties on the new or reconfigured States of Central-East Europe and the Balkans. For Austria and Hungary, provisions for minority protection were included in the peace treaties. Poland and Greece signed minority protection treaties with the allied and associated powers. States like Albania and Lithuania made minority protection declarations as a condition for their membership of the League of Nations. There were also bilateral treaties protecting minorities such as the one between Germany and Poland. Although there were significant variations among these treaties, many of their provisions were common.

The 1919 Minorities Treaty between the Principal Allied and Associated Powers and Poland served as a model for later treaties and declarations. It provided protection of life and liberty and religious freedom for all the inhabitants of Poland. All Polish citizens were guaranteed equality before the law and the right to use their own language in private life and judicial proceedings. Members of racial, religious and linguistic minorities were guaranteed the treatment and security in law and in fact as other Polish nationals, and the right to establish and control at their expenses their own religious, social and educational institutions. In view of the particular history of oppression and

⁴² 11 to 4 Votes. Reports of Judgments, Advisory Opinions and Orders of the International Court of Justice, 1971, pp. 55-58, cited in Hamalengwa, M., et al, 1988, The International Law of Human Rights in Africa – Basic Documents and Annotated Bibliography, Dordrecht: Martinus Nijhoff, pp. 111-119.

violence, there were specific guarantees for the Jew [43].

In summary, the special minority regimes provided for: complete protection of life and liberty, equality of civil and political rights before the law and special guarantees for nationals belonging to minorities to use their language and establish educational, social and religious institutions.

Hence, in the *Albanian Minority Schools Case* [44], the Permanent Court of International Justice in its Advisory Opinion rejected the position of the Albanian Government that its closure of private schools was a general measure applicable to both the majority and the minority of Albanian nationals. That was because the new law affected the minority Christians' Greek-Language in Albania. Minority issues are sensitive ones, the wrong handling of which could lead to secession bids, civil wars as witnessed in Nigeria between 1967-1970, and World Wars [45]. Even in developed countries like America, the minorities are oppressed. The Report of the U.S. Mission on the Administration of Death Penalty sponsored by the International Commission of Jurists revealed gross discrimination against minority African-Americans [46]. The promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of the states in which they live, and by extension the political and social stability of the whole world. The case of Rwanda is a great lesson [47].

It is in that respect, among other reasons, that the General Assembly of the United Nations in 1992 proclaimed a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities [48]. The Assembly was inspired

⁴¹ See generally, Steiner, H. J. and Alston, P., 2000, *International Human Rights: Laws, Politics and Morals*, (2nd ed.), London: OUP, pp. 93-103.

⁴⁴ Advisory Opinion, PCIJ 1935, Series A/B – NO. 64. See also *Roman Catholic Separate School Trustees v The*

King (1928) A.C. 363 about Roman Catholic Minorities in Quebec, Canada. See generally, Abel, S. A., 1975,

Laskin's Canadian Constitutional Law, (4th ed.), Toronto: Carswell Co. Ltd, Chapter XIII.

⁴⁵ The immediate cause of the First World War was the minority oppression in the Balkans.

⁴⁶ Ade-Ajayi, J. F. and Akinseye-Goerge, Y., 2002, *Kayode Eso, The Making of a Judge*, Ibadan: Spectrum, pp.

464-467.

⁴⁷ *Infra* Note 51

⁴⁸ G. A. Res. 47/135, 18 December, 1992.

by the provision of Articles 27 of ICCPR earlier referred to. In summary the Declaration seeks the protection of the existence of minority rights: culture, language, religion, traditions and customs, economic rights, etc, with a rider that measures taken by states to ensure the effective enjoyment of those rights shall not prima facie be considered contrary to the principles of equality contained in the Universal Declaration of Human Rights [49].

RECOMMENDATIONS

For better and more effective regime of minority rights in Nigeria and the whole wide world, the following recommendations are made:

- **Fundamental Socio-economic and political redistribution:** There should be equitable distribution of socio-economic resources of the country, and political posts to various groups that make up the country. Even if more 100 states are created, they may still be further requests for creation of more. After all, Britain with its unitary system of government still satisfies her citizens. Successful federal states like America and Canada should be emulated to ensure the success of the Federal Republic of Nigeria.
- Even development of Nigeria, especially the oil bearing states should be undertaken in the spirit of justice and fairness.
- Nigeria should be restructured to give more powers over the natural resources to the federating units, some of which are inhabited by the minority groups. This ensures fiscal federalism with its attendant peace and unity.
- Minorities should be represented on advisory and decision-making bodies in fields like religion, education, culture and local forms of self-government.
- Violators of Federal Character principle enshrined in the Constitution of the Federal Republic of Nigeria 1999 should always be prosecuted and punished without delay.
- The General Assembly Declaration on the Rights of People Belonging to Minorities (1992) should be upgraded to an International Covenant so that it shall have the force of law binding states that might be signatories to it.

CONCLUSION

Nigeria was a creation of colonial masters. The nations that make up Nigeria never formally agreed to live together. Having found themselves in this situation, sincere efforts have to be made to live together as one united nation, and respect the rights of one another as individual citizens and groups, major or minor, which make up Nigeria. Secession is not the option. Though

⁴⁹ Article 8(3) of the Declaration.

secession conducted with mutual consent can grant self-determination to the minority group; but secession is almost always resisted. This is because the international law position on secession or self-determination is that the concept applied to colonized peoples generally and to peoples in a sovereign state in limited circumstances, viz:

- That the people are oppressed by way of serious human right violations.
- That they are not allowed access to and participation in the governance of the state.

The separation of the Czechs and Slovaks was done by mutual assent. So was the secession of Singapore from Malaysia in 1965. However, the request of the People of Katanga before the Africa Commission to secede from Zaire was refused [50]. Neither was the request of Quebec before the Canadian Supreme Court to secede from Canada honoured [51].

Since it is well known that the boundaries of African States (Nigeria inclusive) are artificial, with nations and ethnic groups split into two or three between different states, and incompatible peoples and nations grouped together in states without their prior consent; since it is also very difficult as our examples have shown to separate from these states by way of secession, the best option is to learn to tolerate one another and manage the differences to attain unity in diversity [52].

For instance, the Rwanda Hutu successfully overthrew their overlords (Tutsi) but a similar attempt in Burundi was not only a failure but a catastrophe. Between 1992 and 1993 over 100,000 Hutus were killed and the same number forced into refugee camps in neighbouring Rwanda, Tanzania, Uganda and Zaire. The Organization of African Unity (O. A. U.) (now African Union (A.U.)), deferring to its principle of non-interference in the domestic affairs of member states did nothing about the massacres [53]. Bloody and devastating was the attempt of the People of Eastern

⁵⁰ Katangese Peoples' Congress v Zaire (Communication No. 75/92, Re-Produced in 1993, 3 Int'l Human Rights Reports, p.136.

⁵¹ Reference Re Secession of Quebec (1998) 2 S.C.R. 217.

⁵² See the O. A. U. Cairo Resolution of 1964.

⁵³ Umzurike, O., The Present State of Human Rights in Africa (1986) *Cal. L.J.* pp. 62-86. A reprisal attack followed in Rwanda between 1994 and 1995. The Film, 'Motel in Rwanda' showed a goring sight of the mindless

massacres of the Tutsis in Rwanda; even those that took refuge in the church premises were not spared. The Tutsi is

the minority group in Rwanda.

Nigeria to secede from Nigeria in 1967. It brought about the Nigerian Civil War of 1967-1970 with human and capital losses of unquantifiable magnitude [54].

It is the legal and political solutions devised to protect the rights of minority groups in Nigeria that have engaged our attention in this paper. The paper has discussed such steps as: states creation, inclusion of human rights in the Constitution, federal character, resources derivation, allocation and utilization, commissions on minority issues, and minority regimes on international plane. The recommendations, if implemented, will engender mutual respect and unity in Nigeria. Love, equity and trust should be built to douse spate of agitations for secession or self-determination. Hate speeches should be avoided. These humble efforts aim at improving minority rights protection in Nigeria. Let love reign supreme, let discrimination be avoided, and let justice be done. Inflammatory statements which tend to make the North superior to the South and abuse of religion should be avoided in the interest of national peace, unity and security [55]. Above all, let the Federal Government of Nigeria always give to Caesar what belongs to Caesar.

⁵² For a detailed discussion on the right to Self-Determination, see generally Sagay, I. E., 2005, Self-Determination

in Modern International Law and its Implication for African States in J.A. Yakubu (ed.), Legal Thoughts: Essays

in Honour of Prof B.O. Iluyomade, Ibadan: Demyaxs, pp. 98-115; Okafor, O.C., 2002, Entitlement, Process and

Legitimacy in the Emergent International Law of Secession in C.C. Nweze (ed.), Justice in the Judicial Process,

Essays in Honour of Hon. Justice Eugene Ubaezonu, JCA, pp. 449-490.

⁵³ Asemota, S., 2001, The Struggle for Justice, Benin: CSMN, pp.88-90 particularly p. 89.