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An Appraisal of the Legal Framework for the Indivisibility and Indissolubility of Nigeria

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Abstract

As a matter of factual inference, sections 14(3); 15(2), (3)(c) & (d), (4); 42(1) of the Constitution of the Federal Republic of Nigeria 1999 somewhat provides notable constitutional affirmation of the heterogeneity of the population of the Federal Republic of Nigeria. In other words, those constitutional provisions confirm that there are various/different [indigenous] peoples, religious and linguistic ties or groups, sectional and/or ethnic groups in Nigeria. However, regardless of the variety of indigenous peoples with diverse religious, linguistic, and ethnic ties that make up Nigeria's population, the Nigerian Legal System has some firm legal framework to ensure not only the oneness of Nigeria but the indivisibility and indissolubility the "one Nigeria". The said legal framework may broadly be categorized into two, namely: constitutional framework and statutory framework for the indivisibility and indissolubility of Nigeria are presented and interrogated in this Paper.

Keywords: Indivisibility, Framework, Nigeria, Legal System, Heterogeneity, Constitution.

1. Introduction and Conceptual Classification

The 'indivisibility and indissolubility of Nigeria' is declared in *section 2 of the Constitution of the Federal Republic of Nigeria 1999*. Indivisibility is derived from the adjective 'indivisible' whereas indissolubility is derived from the adjective 'indissoluble'. On one hand, the adjective 'indivisible' in the main means "not separable into parts"[1], while on the other hand, the adjective 'indissoluble' in the main means "impossible to take apart or bring to an end"[2]. Accordingly, to declare that the Federal Republic of Nigeria is indivisible and indissoluble is to declare that the geographical area/territory now known as and called Nigeria is not separable into [independent] sovereign parts/regions and that it is impossible to take apart or bring to an end the national relationship binding the various [indigenous] peoples in Nigeria. It may be instructive to submit here that something can be one but divisible and dissoluble; hence oneness of Nigeria does not automatically translate to the indivisibility and indissolubility of Nigeria.

2. The Constitutional Framework

The constitutional framework for the oneness and indivisibility of the various indigenous peoples in Nigeria consists of those provisions contained in the extant Constitution which prescribe, declare, affirm, support, insist, and ensure that the Federal Republic of Nigeria is one indivisible sovereign state.

2.1 The Preamble to the Constitution of the Federal Republic of Nigeria 1999

The extant Constitution of the Federal Republic in its preamble [that is the introductory/preliminary statement] feigns to furnish the purpose and rationale of the said Constitution, and present and/or elucidate the intention of the Constitution. The said Preamble of the extant Constitution of Nigeria states that:

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[1] BA Garner, *Black's Law Dictionary* (9th edn, Minnesota: West, 2009) p. 843.

[2] Cambridge Dictionary, Meaning of Indissoluble in English <https://dictionary.cambridge.org/dictionary/english/indissoluble> accessed 6 February 2024.

> ***WE THE PEOPLE*** *of the Federal Republic of Nigeria:*
>
> ***HAVING*** *firmly and solemnly resolved:*
>
> ***TO LIVE*** *in unity and harmony as one indivisible and indissoluble sovereign nation under god, dedicated to the promotion of inter-African solidarity, world peace, international cooperation and understanding…*
>
> ***DO HEREBY*** *make, enact and give ourselves the following constitution: [Underlining mine].*

The above-underlined phrase 'TO LIVE in unity and harmony as one indivisible and indissoluble sovereign nation' in that context as contained in the Preamble to the extant Constitution of the Federal Republic of Nigeria suggests that 'WE THE PEOPLE of the Federal Republic of Nigeria' which expression in its real sense ought to encompass the various indigenous peoples that make up the population of Nigeria have firmly and solemnly resolved to co-exist (live together) not only in unity and harmony but as one indivisible and indissoluble sovereign nation. Assuming but not concluding and/or conceding that the above suggestion is true, it means that the various [indigenous] peoples in Nigeria voluntarily decided to have Nigeria not only to continue as one nation but as 'one indivisible and indissoluble sovereign nation' and thus the supposed voluntary decision as contained in the Preamble becomes a part of the constitutional framework for the oneness and indivisibility of Nigeria.

2.2 Section 2(1) of the Constitution of the Federal Republic of Nigeria 1999

Beyond the preliminary statement contained in the Preamble to the Constitution of the Federal Republic of Nigeria 1999, section 2(1) of the same the Constitution of the Federal Republic of Nigeria 1999 makes a clear affirmation, declaration and announcement whereby it is stipulated that 'Nigeria is one indivisible and indissoluble sovereign state to be known by the name of the Federal Republic of Nigeria'. In *Alhaji Mujahid Dokubo-Asari v Federal Republic of Nigeria*,[3] the Supreme Court of Nigeria stated *inter alia* that:

> *The corporate existence of Nigeria as a united, harmonious, indivisible and indissoluble sovereign nation, is certainly greater than any citizen's liberty or right. Once the security of this nation is in jeopardy and it survives in pieces rather than in peace, the individual's liberty or right may not even exist.*[4]

2.3 Social Contract in Section 14(1) & (2) of the Extant Constitution of Nigeria

Section 14 (1) of the Constitution of the Federal Republic of Nigeria 1999 stipulates that 'the Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice'. Subsection 2 of same section went further to declare accordingly that:[5]

> ***a)*** *sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority;*

[3] (2007) LPELR-958(SC) pp 38 – 38, paras B – E.
[4] Per Ibrahim Tanko Muhammad, JSC. The underlining is the researcher's for emphasis.
[5] Constitution of the Federal Republic of Nigeria 1999, s. 14 (2).

> ***b)*** *the security and welfare of the people shall be the primary purpose of government: and*
>
> ***c)*** *the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.*

Putting together the above constitutional provisions of section 14 (1)&(2)of the Constitution of the Federal Republic of Nigeria 1999andthe Preamble to the said Constitution will bring to view the social contract theory such that it will seem that the various [indigenous] peoples in Nigeria have conceded their rights to the government of the Federal Republic of Nigeria and perhaps it was thought that the best way to secure that seeming concession is to affirm, declare and/or announce in the organic law (the Constitution) that Nigeria shall be one indivisible and indissoluble sovereign nation.

The social contract theory brought to view here should ordinarily mean that the various [indigenous] peoples in Nigeria had willingly and collectively surrendered their respective rights [freedoms and liberties] perhaps including their right to self-determination to the government of Nigeria, in return for protection of their lives, property and the provision of guarantees to enjoy certain natural rights like the right to life, right to freedom of expression, right to freedom of movement among others.

2.4 Right to Freedom from Discrimination

The main [ancient] lines of division and/or diversity across the population/peoples of the Federal Republic of Nigeria include religion and ethnicity. Given the aforementioned lines of division and/or diversity vis-à-vis the oneness, indivisibility and indissolubility of Nigeria, section 42(1) of the 1999 Constitution contains firm provisions which seek to cover the aforesaid lines and protect the various [indigenous] peoples which make up Nigeria's population from any form of discrimination based on their respective religions and ethnic groups among other possible grounds of discrimination such as places of origin, sex, and political opinions.[6]

Now, by providing that 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 be discriminated against, section 42(1) of the 1999Constitutionis not just a fundamental right but my equally play the role of constitutional pillar consciously constructed to firmly bear the weight of the oneness, indivisibility and indissolubility of Nigeria in the face of the undeniable realities of the ethnic and religious diversity in Nigeria's population.

2.5 Prohibition of State Religion and Right to Freedom of Religion

Nigeria is not just a multi-ethnic but equally a multi-religious state. The two major religions in the country are Islam and Christianity.[7] Although the 1999 Constitution of the Federal Republic of Nigeria does not expressly proclaim Nigeria to be a secular state, it however, prohibits both states

[6] *Lafia Local Government v The Executive Government Nasarawa State &Ors.* (2012) LPELR-20602(SC) pp. 18 – 19, paras. A – C; (2012) 17 NWLR (Part 1328) 94 at 146, paras. C – G.

[7] ON Ogbu, 'Is Nigeria a Secular State? Law, Human Rights and Religion in Context', *The Transnational Human Right Review, Vol. 1* (2014) p. 1 <https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1003&context=thr> accessed on 26 January 2024.

and the Federal Government from adopting any religion as state religion,[8] and guarantees to every person the right to freedom of thought, conscience and religion,[9] as well as the right to freedom from discrimination on grounds, *inter alia*, of religion.[10]

The constitutional provisions prohibiting the government from adopting any religion as state religion and guaranteeing the citizens' right to freedom of religion, form part of the constitutional framework for the indivisibility of Nigeria because, without such provisions and guarantees, Nigeria and Nigerians will [tend to] become divided along religious lines.

2.6 Right to Own Immovable Property Anywhere in Nigeria

The right of an individual to acquire and own land in any part of Nigeria is one of the fundamental rights guaranteed by the Constitution whereby it is stipulated that 'subject to the provision of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria'[11]. The Court of Appeal of Nigeria[12] in *Oba Usulor v Ebonyi State Government& Anor.*[13] and in *Lawrence Naaji Teumpenkenso v Alhaji Sani Ahmadu Ribadu & Anor.*,[14] confirmed that the above constitutional right of every citizen's right to own immovable property anywhere in Nigeria.

This fundamental right to own immovable property anywhere in Nigeria is perceived by the researcher as one of the constitutional adhesives and/or one of the constitutional pillars consciously erected to bear the weight of the oneness, indivisibility and indissolubility of Nigeria in the face of the undeniable realities of the diversity in Nigeria's population. This is perhaps to give the [indigenous] peoples in Nigeria the sense of belonging and/or ownership in any part of the country, especially outside the traditional borders of their respective [indigenous] homelands, and thus sway their minds away from the dividing giant lines of ethnicity, culture, and religion.

2.7 The Federal Character and National Integration Principle in the Constitution

The need for strong, viable/workable, working and enforceable bond(s) of national unity in the face of the obvious ethnic, linguistic, cultural and religious diversity among the various indigenous peoples of Nigeria cannot in any wise or under any guise be swept under the carpet or treated with levity, otherwise the peace and progress of the Federation will continually be threatened and at stake. After all, the motto of the Federal Republic of Nigeria shall be Unity and Faith, Peace and Progress;[15] and accordingly, the Constitution provides for a constitutional principle known as the principle of the federal character of Nigeria,[16] and in the same spirit, it (the extant Constitution of Nigeria) went further to declare that national integration shall be actively encouraged, whilst discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic

[8]*Constitution of the Federal Republic of Nigeria 1999*, s. 10.
[9]*Ibid.*, s.38(1).
[10]*Ibid.*, s.42(1).
[11] *Constitution of the Federal Republic of Nigeria 1999, s. 43.*
[12] Enugu Judicial Division
[13] (2020) LPELR-49935(CA) pp 29 – 30, paras. D – E.
[14]*Supra.*
[15]*Ibid., s. 15(1).*
[16]*Ibid.*, s. 14(3) & (4)

association or ties shall be prohibited.[17] To promote this national integration, the extant Constitution of Nigeria went further to stipulate that it shall be the duty of the State to:[18]

a) provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation;

b) secure full residence rights for every citizen in all parts of the Federation;

c) encourage inter-marriage among persons from different places of origin, or of different religious, ethnic or linguistic association or ties; and

d) promote or encourage the formation of associations that cut across ethnic, linguistic, religious and or other sectional barriers.

On the constitutional principle of federal character of Nigeria, section318(1) of the Constitution defines federal character of Nigeria to mean 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. This principle of federal character can be gleaned from the provisions of sections 14(3) & (4) and section 15(4) of the 1999 Constitution of Nigeria. The researcher has deduced two basic elements of the Federal Character of Nigeria, to wit:

1. **The Federal Character of Nigeria is the distinctive desire of the people of Nigeria:** It is not just a mere or general desire/will of the people of Nigeria but a distinguished/distinctive desire of the people of Nigeria. The impression here is that the idea of the Federal Character of Nigeria is a peculiar idea which originated from the people of Nigeria. Since this particular desire and/or idea of the people of Nigeria is peculiar, distinguished and distinctive, the Nigerian Legal System ought to give genuine and sufficient national attention.[19]

2. **The ultimate purpose/goal of the Federal Character of Nigeria is to give every citizen of Nigeria a sense of belonging to the nation:** The citizenship of Nigeria cuts across various [indigenous] peoples in Nigeria with their ethnic, linguistic, cultural and religious diversity. Thus, there is need to give every citizen of Nigeria a sense of belonging to the nation to avert/avoid feelings of marginalization by any ethnic, linguistic, cultural and religious group.[20]

In the premises of the foregoing, it is verily believed by the researcher that the constitutional provisions relating to national integration and the federal character of Nigeria must have been crafted and intended to form part of the constitutional framework for the sustenance of the oneness, indivisibility and indissolubility of Nigeria. This is because national integration and the federal character principle are meant to give every citizen of Nigeria a sense of belonging to the nation to avert/avoid feelings of marginalization by any ethnic, linguistic, cultural and religious group, and

[17] *Ibid.*, s. 15(2)
[18] *Ibid.*, s. 15(3)
[19] OE Okeke & EOC Obidimma, 'The Federal Character of Nigeria: A Delicate Bedrock for National Unity and Loyalty', (2021) 12 (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, pp. 9 – 17<https://www.ajol.info/index.php/naujilj/article/view/215301/203053> accessed on 1 March 2024
[20] *Ibid.*

to foster national loyalty and unity notwithstanding the ethnic, linguistic, cultural and religious diversity in Nigeria's population.

2.8 Primacy and Supremacy of the Constitution

The primacy and supremacy of the extant Constitution is proclaimed in Section 1 of the Constitution and is encapsulated in the following proclamations:[21]

1. This Constitution is supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria.[22]
2. The Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.[23]
3. If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.[24]

The legal purports and/or imports of this noted constitutional culture of supremacy which are relevant to this study can be summed up as follows:

1. Since the oneness, indivisibility and indissolubility of Nigeria are pronounced in the supreme law of Nigeria (the Constitution of the Federal Republic of Nigeria 1999), the primacy and supremacy of the Constitution make it imperative that no person, authority or law is permitted to derogate from that constitutional pronouncement under any guise including the exercise of the international law right to self-determination. This summary can find further credence under the provisions of *section 12(1) of the Constitution of the Federal Republic of Nigeria 1999* whereby it is provided that 'No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly'. In fact, by *section 1(3) of the Constitution of the Federal Republic of Nigeria 1999* even upon domestication, a treaty will still be subject to the supremacy of the Constitution of the Federal Republic of Nigeria 1999 and shall be void to the extent of any inconsistency between it (the domesticated Treaty) and the Constitution.
2. Even if the right to self-determination has become settled under international law as inuring to [indigenous] peoples outside the context of decolonization as it were and in that light, if any of the various [indigenous] peoples in Nigeria decides to pursue the realization of their collective right to self-determination and/or self-government, that decision and any move or movement in furtherance and in pursuance thereof, shall be unconstitutional and thus illegal as long as the primacy and supremacy of the Constitution of the Federal Republic of Nigeria 1999 are intact especially vis-à-vis the constitutional affirmation, declaration and pronouncement of Nigeria as one indivisible and indissoluble sovereign state.

[21]*Colonel SS Ibrahim v The Nigeria Army* (2015) LPELR-24596(CA) pp. 14 – 15, paras. E – A.
[22] Constitution of the Federal Republic of Nigeria, 1999, s. 1(1).
[23]Ibid., s. 1(2).
[24]Ibid., s. 1(3).

3. Statutory Framework

The statutory framework for the oneness and indivisibility of the various [indigenous] peoples in Nigeria consists of those provisions contained in statutes (that is to say, contained in other laws other than the supreme law) which prescribe, declare, affirm, support, insist and/or ensure that the Federal Republic of Nigeria remains one indivisible sovereign state.

3.1 The Criminal Code / Penal Code

Treason, Treasonable Felony and Related Offences

The offence of treason is contained in section 37(1) of Nigeria's Criminal Code.[25] That section states that any person who levies/wages war against the State to intimidate or overawe the President or the Governor of a State is guilty of treason, and is liable to the punishment of death.

More so, any person conspiring with another person, either within or without Nigeria to levy war against the State with the intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and is liable to the punishment of death.[26]

Again, by section 38 of the Criminal Code, any person who instigates any foreigner to invade Nigeria with an Armed Force is guilty of treason and is liable to the punishment of death. Thus, the offence of treason has three arms.

Under section 40 of the Criminal Code, any person who becomes an accessory after the fact to treason or knowing that another person intends to commit treason, fails to give prompt information thereof to the appropriate authority or fails to use other reasonable endeavours to prevent the commission of an offence is guilty of a felony and is liable to imprisonment for life.

Under section 41(a)-(d) of the Criminal Code, if any person forms an intention for the purpose of removing the President of the Federation or the Governor of a State, otherwise than by constitutional means for the purpose of levying war against Nigeria in order to compel the President to change his measure (polices) or counsels in order to put any force or constraint upon or in order to intimidate or overawe the National Assembly or any other legislature or legislative authority or to instigate any foreigner to make any armed invasion of Nigeria or any of the territories (States) thereof, and goes further to manifest such intentions by an overt (positive) acts, such a person is guilty of a felony and is liable to imprisonment for life.

Now, what is more important from the foregoing provisions of the criminal law is that any act or action or reaction or omission by any person or group of persons or even indigenous peoples in Nigeria which in the light of the foregoing provisions of the Criminal Code constitute any of the above offences will render the person or persons or people involved liable to prosecution and likely conviction; it will be immaterial that the said act or action or reaction or omission was in a perceived exercise of the right to self-determination under international law. It is in line with this,

[25] Cap. C38, LFN 2004.
[26] Section 37(2) of the Criminal Code.

that several leaders and supporters of secessionist movements have faced trial for the offences of treason, treasonable felony and related offences.[27]

Management or Membership of Unlawful Society

In Nigeria, whereas Section 63 of the Criminal Code forbids and penalizes the management of an unlawful society, Section 64 of the same Criminal Code forbids and penalizes membership and aiding of any unlawful society. In the words of the aforesaid section[28] "Any person who manages or assists in the management of an unlawful society is guilty of a felony and is liable to imprisonment for seven years."

Notably, the management or membership of unlawful society is equally an offence under Section 97B of the Penal Code[29] wherein it is provided that "Whoever manages or is a member of an unlawful society shall be punished with imprisonment for a term which may extend to seven (7) years or with fine or with both." This was confirmed in *Ibrahim Garba Wala v Federal Government of Nigeria*[30].

A society in the context of the foregoing provisions has been defined to include "any combination of ten or more persons whether the society be known by any name or not."[31] And on what constitutes an unlawful society, Section 62(2) of the Criminal Code provides that:

> *(2) A society is an unlawful society-*
>
> *(i) if formed for any of the following purposes-*
>
> *(a) levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of Nigeria; or*
>
> *(b) killing or injuring or encouraging the killing or injuring of any person; or*
>
> *(c) destroying or injuring or encouraging the destruction or injuring of any property; or*
>
> *(d) subverting or promoting the subversion of the Government or of its officials; or*
>
> *(e) committing or inciting to acts of violence or intimidation; or*
>
> *(f) interfering with, or resisting, or encouraging interference with or resistance to the administration of the law; or*

[27] An instance of a charge of treason and treasonable felony was the charge against Ralph Uwazurike, Ambrose Anyaso, Augustine Ihuoma, Chibuike Nwosu, Kelechi Ubabuike, Chimamkpa Okorocha and Benedict Alakwem as noted by the Court in *Ralph Uwazurike& 6 Ors. v The Attorney-General of the Federation* (2013) LPELR-20392(SC) pp. 5 – 8, paras. A – B. A . See also, the ongoing charge of treason and treasonable felony trial of Nnamdi Kanu and other members and supporters of the proscribed group (secessionist movement) known as the Indigenous People of Biafra (IPOB).

[28] *The Criminal Code*, s. 63

[29] Penal Code (Northern Region) Federal Provisions, Act No. 25 of 1960.

[30] (2020) LPELR-51082(CA) pp. 14 - 19

[31] *The Criminal Code*, s. 62(1)

(g) disturbing or encouraging the disturbance of peace and order in any part of Nigeria; or

(ii) if declared by an order of the President to be a society dangerous to the good government of Nigeria or of any part thereof.[32]

It is instructive to note that under the Penal Code, for a society to be an unlawful society, there must be a declaration by the President that the society is dangerous to the good government of the Federation or any part thereof.[33] However, under the Criminal Code, the tenor of the relevant provisions shows that even in the absence of the President's declaration, the Court will find and hold a society to be unlawful if there is evidence to show that the society was formed for any one or more of the following purposes:[34]

1. levying war or encouraging or assisting any person to levy war on the Government or the inhabitants of any part of Nigeria; or
2. killing or injuring or encouraging the killing or injuring of any person; or
3. destroying or injuring or encouraging the destruction or injuring of any property; or
4. subverting or promoting the subversion of the Government or of its officials; or
5. committing or inciting to acts of violence or intimidation; or
6. interfering with, or resisting, or encouraging interference with or resistance to the administration of the law; or
7. disturbing or encouraging the disturbance of peace and order in any part of Nigeria; or

In Nigeria, Ralph Uwazuruike and others are good example of advocates of the right to self-determination who have been charged with the offence of membership and management of unlawful society.[35]

Sedition

Sedition can be aptly defined as any act, speech or publication that is done with a seditious intention. It can also be an insurrectionary movement tending towards treason, but yet bereft of any overt act in that wise; attempts made by meetings or speeches, or by publications, to disturb the tranquility of the state.[36] The offence of sedition is aimed at protecting public peace and order by prohibiting any act or conduct which brings or tends to bring hatred or contempt to the person of the President or Governor of a State, or which excites disaffection against them, Federal or State Government or against the administration of justice or raise discontent or disaffection among the citizens or other inhabitants of Nigeria. It also covers the protection of the government against malicious criticisms. These acts can be by words or publication. Under section 51 (1) of the Criminal Code, the offence of sedition cover situations where:

[32] See also *The Criminal Code*, s. 62A; and *The Penal Code*, s. 97A.
[33] The Penal Code, s. 97A.
[34]The Criminal Code, s 61(2) (i) – (g).
[35] See *Ralph Uwazuzuike & 6 Ors. v The Attorney-General of the Federation* (supra) pp. 7 – 8
[36] BA Garner(ed), *Black's Law Dictionary* (8thedn, Minnesota: Thomson West Publishing Co., 2004) p. 1100.

a) any person does or attempts to do any preparation, or conspires with any person to do, any act with a seditious intention;

b) any person utters any seditious words;

c) any person prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;

d) any person imports any seditious publication, unless he has no reason to believe that it is seditious.

In any of the above cases, such a person shall be guilty of an offence and be liable on conviction, for a first offence to imprisonment for two years or to a fine of N200 or to both, and for a subsequent offence, to imprisonment for three years; and any seditious publication shall be forfeited to the government. It also an offence for any person without lawful excuse to have in his possession any seditious publication.[37]

Seditious intention has been defined by the provision of *section 50 (2) of the Criminal Code*. It provides that a "seditious intention" is an intention-

(a) To bring into hatred or contempt or excite disaffection against the person of the President or of the Governor of a State or the Government of the Federation; or

(b) to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established; or

(c) To raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria; or

(d) To promote feelings of ill-will and hostility between different classes of the population of Nigeria.

Accordingly, any act, attempt, publication, words or anything done or said with any of the above-stated intentions is a thing said or done with a seditious intention.[38]

A seditious offence such as a seditious publication has two elements namely, the mental element known as the *mens rea*, and the act itself known as the *actus reus,*[39] but it is instructive to note that *Section 50(3) of the Criminal Code* attaches seditious offences with strict liability as it provides that "every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself."

[37] Section 51(2) of the Criminal Code.
[38] African Press Limited & Anor. v Attorney General Western Nigeria (1965) LPELR-25228(SC) p. 2, paras. A – C.
[39] PN Nwokolo, 'The Nigerian Press and the Law of Sedition: A Progressive Interpretation', *Review of Education Institute of Education Journal, University of Nigeria Nsukka. Vol. 23. No.1.* <https://www.unn.edu.ng/publications/files/images/PeterNNwokolo.pdf> accessed on 31 January 2024

From the above interpretation and statement of the law, it is clear that though there is a constitutional guarantee of the fundamental right to freedom of expression including the right to hold opinions and to receive and impart ideas and information without interference,[40]

Conduct Likely to Cause Breach of Peace

Section 69 of the Criminal Code defined unlawful assembly as:

> *When three or more persons, with intent to carry out some common purpose, assemble in such a manner, or, being assembled, conduct themselves in such a manner, as to cause persons in the neighbourhood to fear on reasonable grounds that the*
>
> *persons so assembled will tumultuously disturb the peace, or will by such assembly needlessly and without and any reasonable occasion provoke other person tumultuously to disturb the peace, they are an unlawful assembly.*

This offence is committed irrespective of the fact that the original assembling was lawful if, being assembled; they conduct themselves with a common purpose in such a manner as aforesaid.[41]

An assembly of three or more persons who assemble for the purpose of protecting any house against persons threatening to break and enter the house in order to commit a felony or misdemeanor therein is not an unlawful assembly.[42]

When an unlawful assembly has begun to act in so tumultuous manner as to disturb the peace, the assembly is called a riot, and the persons assembled are said to be riotously assembled.[43] This is what is known as the offence of riot under the Criminal Code.

The punishment for taking part in an unlawful assembly or riot under the Criminal Code is imprisonment for one year.[44]

It is noteworthy that the purpose of these offences is combat the disturbance of public peace or a likelihood of it. Thus, the assembly of three or more persons will be unlawful if it can be reasonably ascertained as likely to cause a breach of public peace. The important test for you to commit to memory here is that rational men should have reasonable grounds for the disturbance of public peace. Also, it is an unlawful assembly if three or more persons come together with intent to carry out some common purpose. It is immaterial that the people involved changed their minds and left the place where they are assembled without causing a threat to peace.

Another important point to note is that, a meeting for the purpose of committing an offence not connected to a breach of the peace is not an unlawful assembly, e.g. stealing, robbery, etc. There must be a probability of violence or tumult for a meeting to be an unlawful assembly.[45] The

[40]*The Constitution of the Federal Republic of Nigeria 1999*, s. 39(1).
[41] Section 69 of the Criminal Code.
[42]*Ibid.*
[43]*Ibid.*
[44] Section 70 of the Criminal Code.
[45]*Chief Constable of Devon, ex parte Central Electricity Generating Board* (1981) 3 All ER 826

assembly need not necessarily be in a public place. If three or more persons met in a private house with intent to go out and commit acts that endangers public peace, it is unlawful assembly.[46]

Note that for an assembly to be unlawful, it is not important that those assembled should have the intention to commit any crime; it suffices if the persons are in such in a number that their presence reasonably raises terror and alarm within the neighbourhood.[47]

The presence of a person at a meeting is not in all cases illegal, in order to show that a person unlawfully assembled, it must be proved that the person intends to use or abet the use of violence or that the person does or abet acts which to his knowledge is likely to result in the disturbance of public peace.[48]

In the same spirit with the foregoing provisions of the Criminal Code, *Section 114 of the Penal Code* provides that:

> *Whoever does any act with intent to cause or which is likely to cause a breach of the peace or disturb the public peace shall be punished with imprisonment which may extend to three years or with fine which may extend to Six Hundred Naira or with both.*

Another offence relating to breach of the peace is that of unlawful procession under section 88(1) of the Criminal Code, which provides that:

> *Any persons who assemble together, to the number of three or more, under any of the following circumstances-*
>
> *(a) Bearing or wearing or having amongst them any firearms, bows and arrows, spear, sword, knife, or other offensive weapon; or*
>
> *(b) Publicly exhibiting any banner, emblem, flag, or symbol, the displaying of which is calculated to promote animosity between persons of different religious faiths or different factions, or*
>
> *(c) Being accompanied by any music, beating of drums, or other noise calculated to promote such animosity;*
>
> *and, being so assembled, join in any parade or procession for the purpose of celebrating or commemorating any festival, anniversary, or event relating to or connected with any religious or other distinction or difference between persons residing in Nigeria or of demonstrating any such religious difference, are guilty of an offence; and each of them is liable to imprisonment for one month. If the offender is himself bearing or wearing firearms, a bow and arrows, spear, sword, knife, or any other offensive weapon, he is liable to imprisonment for six months.*

[46]*Brodribb* (1816) 6 C & P 571
[47]*Stephens* (1839) State Tr. NS 1189.
[48]*Hunt* (1820) 1 State Tr NS 171; *Ogenyi v I.G.P.* [1957] N.R.N.L.R. 140

> *When three or more persons are so assembled together, it is the duty of a peace officer to make or cause to be made, a command in the name of the President, in such words as he thinks fit, to the persons assembled to disperse peaceably.*
>
> *A person who, being so assembled, continue together to the number of three or more, and do not disperse themselves within the space of a quarter of an hour after the giving of the command are guilty of an offence, and each of them is liable to imprisonment for three years.*

Now for instance, a looking at paragraph (b) as set out above under the offence of unlawful procession which has to do with 'publicly exhibiting any emblem, flag, or symbol, which is calculated to promote animosity between persons of different religious faiths or different factions', it is usually the case that secessionist movements who usually celebrate/commemorate certain events or anniversaries and in the course of such celebration/commemoration proceed or protest exhibiting their emblems or flag may be caught up by the criminal law on unlawful procession and prosecuted thereunder.

3.2 Terrorism (Prevention and Prohibition) Act, 2022

The extant principal legislation in Nigeria forbidding and penalizing acts of terrorism is the Terrorism (Prevention and Prohibition) Act, 2022 which is an Act of the National Assembly of Nigeria that repealed the Terrorism (Prevention) Act, No. 10, 2011 and enacted the Terrorism (Prevention and Prohibition) Act, 2022 to provide for:

> *(a) effective, unified and comprehensive legal, regulatory and institutional framework for the detection, prevention, prohibition, prosecution and punishment of acts of terrorism, terrorism financing, proliferation and financing the proliferation of weapons of mass destruction in Nigeria; (b) mechanisms for the implementation of financial measures arising from counter-proliferation Resolutions, in line with Article 41 of the Charter of the United Nations; (c) measures under Nigerian law for the implementation and enforcement of Regional and International Counter Terrorism Conventions, and Agreements for the combating of terrorism, terrorism financing and related offences; (d) procedures for the declaration of a person or entity as a terrorist or terrorist entity, or terrorism financier; (e) extra territorial jurisdiction of the courts in relation to acts of terrorism; (f) measures to enable Nigeria to act effectively in the fight against the financing of terrorism, including mechanisms regarding reporting of suspected incidents of financial and other support for terrorist entities; (g) measures for the detention, freezing, search and seizure, confiscation and forfeiture of terrorist property; and (h) the compensation of victims of acts of terrorism*[49]

Now, looking at the provisions of Section 3(d) of Terrorism (Prevention and Prohibition) Act, 2022 for example, "an act willfully performed with the intention of furthering an ideology, whether political, religious, racial, or ethnic, and which" and which *inter alia* seriously destabilizes or destroys the fundamental constitutional structure of Nigeria will most likely be held to amount to an act of terrorism since the oneness, indivisibility and indissolubility of Nigeria can safely be

[49]Terrorism (Prevention and Prohibition) Act, 2022, s. 1.

declared and/or presented as a fundamental constitutional structure as can be gleaned from the Preamble to the 1999 Constitution and the sweeping declaration of Nigeria as one indivisible and indissoluble sovereign nation as contained in section 2(1) of the Constitution.

The foregoing example is most relevant to this research because virtually every quest and agitation by any of the indigenous peoples in Nigeria in pursuance or in furtherance of their right to self-determination is a quest and an agitation contrary to or against the constitutional structure of the oneness, indivisibility, and indissolubility of the Federal Republic of Nigeria. This view is based on the glaring fact that the actualization/realization of such quest/agitation will inevitably breach or destabilize or destroy the aforesaid constitutional structure of the oneness, indivisibility, and indissolubility of the Federal Republic of Nigeria. Little wonder the Federal Government of Nigeria has always descended heavily with unimaginable military might upon persons and group[s] of persons that seek to exercise their [perceived] right to self-determination. The aforementioned serious attitude and strict measures of the Federal Government are evident in reports such as the famous report that on the 14th day of September 2017, a combined team of the Nigerian Army, the Police and the DSS invaded the home of Nnamdi Kanu, the Leader of the Indigenous People of Biafra. The report has it *inter alia* that "The combined team arrived at Nnamdi Kanu's house with an armored vehicle and sophisticated weapons; they stayed while shooting sporadically for about three and a half hours".[50]

4. Conclusion and Recommendations

It is axiomatic that the oneness of the modern-day Nigeria was birthed on the British colonization bed without any free and fair consultation with the 'grassroots' made up of the various [indigenous] peoples in Nigeria. Accordingly, the imposed merger/fusion/amalgamation of the various [indigenous] peoples in Nigeria could be responsible, directly or indirectly, for the many incessant challenges/crises ranging and/or resulting from tribalism, religious intolerance, riots, toppling/overthrowing of governments by the military, protests turned bloody, clamours for independence/self-determination, corruption, abuse of power and so on, which have bedevilled Nigeria and some of which still bedevils the country till date.

It is either a glaring imposition, deception or constitutional hypocrisy for section 2(1) of the Constitution of the Federal Republic of Nigeria 1999 to declare the Federal Republic of Nigeria as one indivisible and indissoluble sovereign state whereas the diverse dividing lines of ethnicity, culture, religion stare everyone in the face yet there is no true homage and fidelity to the federal character principle which said principle ought to be an inevitable cohesive legal adhesive to keep the various indigenous peoples truly loyal, together and united in Nigeria. Just for the purpose of emphasis, let us recall that section 318(1) of the Constitution of the Federal Republic of Nigeria 1999 defines federal character of Nigeria to mean 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. Of course, without a true and sustained sense of belonging deliberately and duly given to the citizens of Nigeria, national unity and national loyalty will continually be a legal mirage.

[50] I Inyang, 'Army, DSS raid Nnamdi Kanu's Home, Reportedly abduct his Parents, Siblings', *Daily Post*, published online on 14 September 2017 <https://dailypost.ng/2017/09/14/breaking-army-dss-raid-nnamdi-kanus-home-reportedly-abduct-parents-siblings/?amp=1> accessed on 23 January 2024.

It is hereby recommended that the Nigerian legal system should forsake the sweeping declaration of Nigeria as one indivisible and indissoluble sovereign state as that declaration is both false and hypocritical in the light of the diverse dividing lines of ethnicity, culture, religion which has boldly stared and still stare everyone in the face. It is further recommended that there should be true enforceable homage and fidelity to human rights (both civil and political rights and economic, social, and cultural rights), and the federal character as such homage and fidelity can constitute the adhesive to keep the various indigenous peoples truly loyal, together and united in Nigeria without prejudice to their right to self-determination.