

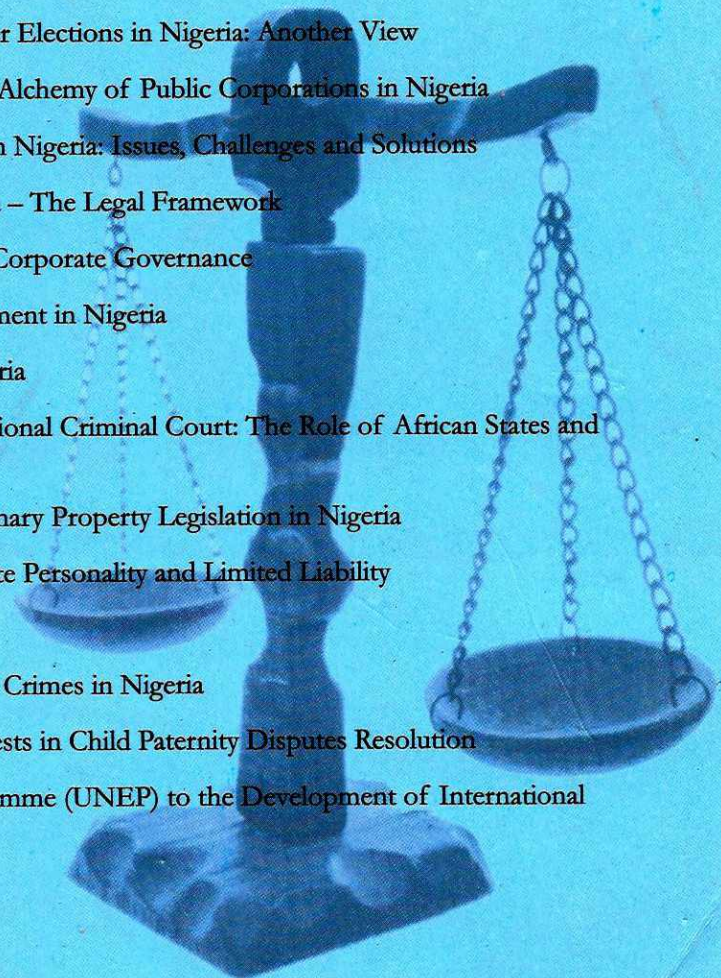


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Contents

- Divorce in Nigeria's Dual Marriage System: Did *Jadesimi v Okotie-Ebob* Rest the Issue?
- A Juxtaposition of Legal Personality under the Common and Islamic Laws
- A Legal Appraisal of the Procedural Deficit in the Conditions Precedent to the Suits against the Nigerian Civil Aviation Authority
- Accrual of Cause of Action in Torts of Defamation of Character and the Available Defences
- African Women in the Cross-Currents of Customary and Contemporary Law: Idealism and Reality in Conflict
- An X-Ray of Dispute Systems Design in Nigeria
- Assisted Suicide Rulings in South Africa and New Zealand: A Contrasting Twist and the Nigerian Situation
- Human Rights and the Judiciary: Islamic Law Perspective
- Indigenizing Corporate Ideology for Better Corporate Governance
- The Requirement for Payment of Tax as a Condition for Elections in Nigeria: Another View
- Privatisation, Deregulation and Good Tax System: The Alchemy of Public Corporations in Nigeria
- Tax Enforcing of the Self-Employed Persons Income in Nigeria: Issues, Challenges and Solutions
- The Desirability or Otherwise of State Police in Nigeria – The Legal Framework
- The Emerging Structure of Employee Participation in Corporate Governance
- The Role of Media in Conflict Resolution and Management in Nigeria
- An Overview of Corporate Governance Codes in Nigeria
- Revisiting the Complementarity Regime of the International Criminal Court: The Role of African States and Challenges
- The Land Use Act, 1978: A Reformative and Revolutionary Property Legislation in Nigeria
- A Critical Re-Examination of the Principle of Corporate Personality and Limited Liability
- The Legal Regime of Noise Pollution in Nigeria
- Legal Framework Towards Fighting Theft and Kindred Crimes in Nigeria
- The Nigerian Legal Framework on the Use of DNA Tests in Child Paternity Disputes Resolution
- The Role of the United Nations Environmental Programme (UNEP) to the Development of International Environmental Law



The Desirability or Otherwise of State Police in Nigeria – The Legal Framework

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Abstract

This article examines the desirability or otherwise of state police in Nigeria. It traces the history of the Nigerian Police Force from the period of colonial rule. It takes a critical look of what is meant by federalism and the attributes of federating units. It examines the argument of those that are against the creation of state police without compromising the interest of those that are for its creation. It also takes a cursory look at examples of what applies in other countries of the world where federalism is being practiced. It also looks at the content of the exclusive and concurrent legislative list as contained in the constitution of Nigeria. This paper then recommends the way forward to achieving a common ground for the opposing opinions.

Introduction

Since the National Assembly set up a committee to further review the 1999 constitution (as amended) there have been divergent opinions as to whether there shall be creation of state police or not, as this is one of the items to be considered in the proposed new constitution. Various groups have proffered arguments as to why there should be state police or not. The aim of this article is to analyze the various view point and proffer the best option to be taken in line with what is obtained in countries operating federal constitution like Nigeria.

History of the Nigeria Police Force

The Nigeria police force hereinafter called NPF is created by the 1999 constitution of the Federal Republic of Nigeria (as amended) with exclusive jurisdiction throughout the country. It states that

“There shall be a police force for Nigeria, which shall be known as the Nigeria police force, and subject to the provision of this section, no other police force shall be established for the federation or any part thereof” (*underline mine for emphasis*)¹

It could be seen right from this constitutional provision, state police is ruled out completely. The 1979 constitution of Nigeria also has a similar provision², constitutional provision also exists, however for the establishment of separate NPF branches forming part of the armed forces of the federation or for the protection of harbours, waterways, railways and airfields.³

The history of the Nigeria police began with a thirty member consular guard formed in Lagos colony in 1861. In 1879, a 1200 member armed paramilitary Hausa constabulary was formed. In 1896, the Lagos police was established. A similar force, the Niger Coast Constabulary was formed in Calabar in 1894 under the newly proclaimed Niger Coast Protectorate. In the North, the Royal Niger Company set up the Royal Niger Company Constabulary in 1888 with Headquarters at Lokoja. When the protectorate of Northern and Southern Nigeria were proclaimed in the early 1900s, part of the Royal Niger Company Constabulary became the Northern Nigeria police and part

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¹Section 214 of the 1999 constitution of the Federal Republic of Nigeria (as amended)

²Section 194 of the 1979 Constitution of the Federal Republic of Nigeria

³Section 214 (c) of the 1999 constitution (as amended)

of Niger Coast Constabulary became the Southern Nigeria police. Northern and Southern were amalgamated in 1914, but their police forces were not merged until 1930, forming the NPF, headquartered in Lagos. During the colonial period, most police were associated with local governments (native authorities). In the 1960s under the First Republic these forces were first regionalized and then nationalized.⁴

Implications of Federalism

Federation has been described as a league or union of states, groups, of people united under a strong central authority but retaining limited regional sovereignty over local affairs⁵. In *A.G. FEDERATION V. A.G. LAGOS STATE*⁶, Federalism was defined:

“as an arrangement whereby powers of government within a country are shared between a national, country – wide government and a number of regionalised (i.e territorially localized) governments in such a way that each exists as governments separately and independently from others operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of its affairs. Federation is thus essentially an arrangement between governments, a constitutional device by which powers within a country are shared among two tiers of government”.

The word federalism derives from a latin word *Foedus* meaning “covenant” signifying a political arrangement brought into being through agreement, not force among the constituent parts. As far back as the 15000s, federalist thoughts had crept into the literature of political thought. Johannes Althusius regarded as the father of modern federalist though argued in his 1603 Masterpieces, *Political Methodice Digesta* called for the adoption of federalism to secure the rights and freedom of his people against the tyranny of the emperor.⁷ From then on, the doctrine of federalism has influenced the rise and fall of states all over the world. The most important of the federalist states being United State of America (USA), Canada, India, Nigeria, Australia and Russia. In fact, right now there is a forum of federations made up of Australia, Brazil, Canada, Ethiopia, Germany, India, Mexico, Nigeria and Canada, domiciled in Canada.⁸ As empires and states with multi-national completions arose, the issue of loyalties of the constituent Nations was a matter of public policy. It was in response to this problem that the doctrine developed

Between 1952 and 1966, Nigeria operated a federal system that allowed each of the three region’s then to develop in consonance with the dominant values of its culture and at its own pace. Western region, home to the Yorubas, obtained self-government in 1957, started the first free primary education in West Africa in 1955, built the sub-region first modern stadium within the same period, established the University of Ife, (now Obafemi Awolowo University) in 1962, etc.⁹ A

⁴ <http://Icweb2.loc.gov/frd/cs/profiles/Nigeria.pdf> (accessed on 16/09/2012). The NPF perform conventional police functions and was responsible for internal security generally, for supporting the prisons, immigration and custom services and for performing military duties within or outside Nigeria as directed. The NPF was under the general operational and administrative control of an Inspector General (IG) appointed by the president and responsible for the maintenance of law and order.

⁵ Garner B.A, (ed) *Black’s Law Dictionary* 8th edn (St Paul publishing, MN, 1990,) p 647

⁶ (2013) 8S.C.M; 105 – 106.

⁷ Akinyemi B, “ Need, Justification for State Creation I, (The Punch, Nigeria, August 19, 2012) p 19. From the 1500s till now, federalism had been canvassed by such scholars as Hugo (1630-1704), Barron de Montesquieu (1689-1755), David Hume (1711-1776), Abbe Charles de Saint-Pierre (1658-1743); Jean Jacques Rousseau (1712-1778); Immanuel Kant (1724-1804); James Madison (1751-1863); Alexandra Hamilton(1755-1804); John Jay (1745-1829); John Stuart Mill (1806-1873); Pierre Joseph (1809-1855); Ernesto Rossi 1944 and Chief Obafemi Awolowo.

⁸ From Wikipedia, the free encyclopedia (accessed on 18-9-12)

⁹ Akinriade Alani, ‘True Federalism is the Way Forward’ (The Nation NewsPaper, Monday Sept 17, 2012) p. 48

cursory look has to be taken of what is meant by federalism as opposed to unitarilism so as to bring to force the need for a constituent state in a federation to have some autonomy in fighting crimes. Search light will now be focused on how some federalist states arrange their policing system.

Policing System in Some Federating States

Australia

Each state of Australia has its own police force. Municipalities do not have police forces and it is left to the state force to police the geographic areas within their respective states. Australia does not have a national police force. The Australia federal police's role is to enforce the laws of the commonwealth, both criminal and civil laws, as well as to protect the interest of the commonwealth, both domestically and internationally. Prior to the federation of Australia, each colony within Australia had numerous police forces, but these were largely amalgamated well before the federation¹⁰.

Canada

Two Provinces in Canada have police forces with jurisdiction over the entire province. In all other provinces, provincial police services are carried out by the Royal Canada mounted police.

There is a third police force in New Foundland known as the Royal New-Foundland Constabulary, which serves several metropolitan, areas¹¹. Although these police forces no longer exist as the main provincial police service, it is in competition with the Royal Canadian mounted police for the role.

India

Each state and territory has a state police force and its own distinct state police service, headed by the commissioner of police (state) or Director General of police (DGP) who is an Indian police service officer. The state police is responsible for maintaining law and order in the township of the state and rural areas. In addition to state police, major cities have their own police force called Metropolitan police which is quite similar to other normal police forces except their different rank designation¹².

United State of America (U.S.A)

In the United State of America, state police is a police body unique to each U.S state, having state-wide authority to conduct law enforcement activities and criminal investigation. In general, they perform functions outside the jurisdiction of the County Sheriff (Vermont being a notable exception), such as enforcing traffic laws on state highway and interstate expressways, overseeing the security of the state capitol complex, protecting the Governor, training new offices for local police forces too small to operate an academy, providing technological and scientific support services, and helping to coordinate multi-jurisdiction task force activity in serious or complicated cases in those state that grant full police powers state-wide¹³. A general trend has been to bring all of these agencies under the state department of public safety, additionally they may serve under different state departments such as the highway patrol under the state department of transportation and the marine patrol under the department of natural resources. Twenty-three U.S states use the term "state police"¹⁴

¹⁰ From Wikipedia, the free encyclopedia (accessed on 18-9-12)

¹¹ Das Dilip K., Michael Palmiotto (ed) World Police Encyclopedia (Taylor and Francis, London, 2014) p. 241

¹² From Wikipedia, the free encyclopedia (accessed on 18-9-12)

¹³ <http://www.rnc.gov.nl.ca/> (accessed on 19-9-2012)

¹⁴ [http://en.wikipedia.org/w/index.php?title=state police & oldid=509826308](http://en.wikipedia.org/w/index.php?title=state%20police&oldid=509826308) (accessed on 18-9-12)

Arguments against the Establishment of State Police in Nigeria

Having looked at the fear of manipulation, some countries practicing federalism like Nigeria with state police formation, this article now examines the various argument put forward by those people against the establishment of state police. On this note, the view of the President Goodluck Ebele Jonathan will first be considered. Declaring open the Nigeria Bar Association 52nd Annual conference in Abuja on Monday, August 27, 2012, he called for restraint in the debate on the creation of state police, although he admitted that the National Council of State welcomed the proposal when it was first raised at one of its meetings. He said:

“On the issue of state police, everybody knows I have been Deputy Governor in Bayelsa state, there was a time we were frustrated and we felt that we should have our police, that we would be able to manage criminals in our state better because of our local environment. Police from other parts of the country find it difficult to go into the waters, but for us who were born inside the water even in the night we can enter ordinary canoe to go everywhere and we feel if we have local police it will be better”.

He continued:

We also feel that looking at the federation and the way the governors are handling elections in their states with the state electoral commission, where opposition parties hardly win even councillorship election so if there is state and the governors manipulate their state and the governors manipulating their state electoral commissions, the instability that it will create, even what we are witnessing will be a child’s play¹⁵

Arguing along the same line, the former chairman of the ICPC, Hon. Justice M.M Akanbi (rtd) who said that learning from the experience of the past Local Government Police Constabulary, which politicians used against opponent, if established now it may lead to the disintegration of the country. His fear is that, politicians will manipulate the state police to the detriment of political opponents¹⁶. Though speaking from experience the situation of those days under the colonial power is quite different from what we are witnessing today. The state of insecurity is alarming. Also the chairman of Offa Local Government of Kwara State, Hon. Shaeed Popoola is also afraid that politicians will use the state police for their own selfish gains to the detriment of political opponents, confirming what the President and the retired justice earlier on said¹⁷

Paucity of Funds

On the other hand, the fear of the Governor of Kwara State on the issue of the establishment of state police is the issue of paucity of funds. His own argument is that the federal government has not been able to adequately fund the police. He opined:

“My biggest grouse with the creation of state police is that I am looking at it from current inability of the Federal government to fund the police adequately. To the extent that the state police is desirable, how do we fund it? States are currently under serious financial pressures of not been able to meet with their various expenditure needs. So you can imagine if we create a

¹⁵ Jonathan Goodluck Ebele, “I am the World most criticised President” (The Punch News Paper (Nigeria) Tuesday, August 28, 2012) p.10.He added that experiment has been made while police came up with the policy that police officers from the rank of inspectors and below should be posted to their state of origin as a way of testing whether police’s familiarity with the environment will make changes, but according to him things became worst.

¹⁶ See the Punch Friday Sept7, 2012p.14-15

¹⁷ See the Punch Sept 4, 2012 p.15.

new expenditure line to join the current expenditure pressure, no matter the desirability, it is not financially feasible¹⁸.

As good as this reason may be, the fact remains that the security in the country is deteriorating and this calls for urgent attention.

The Fear of Proliferation of Police Forces

In his own contribution, Obiallor Obiallor, in his article, "State Police": in whose interest? Opined that after drawing inference from the colonial experience especially when Nigeria operated only three regions compared with thirty six(36) states and the Federal Capital Territory (FCT), which made him to conclude that this will not augur well for the development of the country. He argued:

In the 50s, we had three regions with the fourth region, Mid-West, in 1963. Baring ethnic or religion distinct, regional police in a country of three or four regions cannot be said to be unwieldy. But with the present 36 states (and yet to be created states as being demanded) it means we are likely to have about 40 or more states police commands if the demand for more states sails though. The implication is that in one 'united' country, we would be having different police commands, different police uniforms, different makes of arms and ammunition and different operations¹⁹

Notwithstanding this argument, the fact remains that there are difficult security challenges in the country at this present time that calls for urgent action and new methods of policing the country.

Argument in Favour of the Establishment of State Police

The issue of familiarity with the environment

A member of the National Assembly, Senator Gbenga Kaka is of the view that a state police officer will be familiar with the environment and therefore, will effectively track down criminals and fight crime. He said that the inability of the Nigeria police to effectively fight crime in the country may be connected with the fact that police men were usually posted to communities where they are strangers. He even went further to state that, it is not only the states that can form their own police forces but even the Local Governments, buttressing this fact with Local Government constabulary in the 1950s. He asked rhetorically:

"The question is where did we miss it? We missed it when the military decided to jettison the true federalism that we inherited from our colonial masters and replaced it with a unitary system. At the end of the day, I don't know how it will be possible for a Gbenga to be posted from Ogun State to Potiskum and you expect him to understand the social cultural and religion sentiment of the people and be able to police them effectively. Ditto for an Emeka posted to Sokoto or Mohammed posted to Anambra or Yenagoa. So it is just not normal. If you are really practicing federalism, the state should have their own security apparatus and manage it themselves, especially if they are actually funding the

¹⁸ Ahmed Abdulfatah "Ahmed, L.G boss oppse State Police"(The Punch News Paper Sept 4, 2012) p.14. on the other hand in the same report the chairman of Offa local Government area Mr. Shaecd Popoola opined that the nation is not yet ripe for state police, he reasoned that the state governors could use it to witch-hunt their opponent. He said ' I believed that state governors presently cannot manage it. They are not capable and matured enough to manage the state police. If there is state police, there will be chaos in the country; this view also supports that of Mr. President.

¹⁹Obiallor Obiallor, "State Police: in whose interest?: (The Punch, Tuesday Sept 25, 2012)p.20. he argued further that the proliferation of arms will be unbridled, thus, worsening the security of the country. He argued further, that, with state police and the incessant border skirmishes between and among states, only God will save Nigeria from anarchy, and that of course, no one would rule out of the possibility in future of the demand for the state armed forces. (Army, Navy and Air force)

police. So the kitting of policemen, the vehicles they used and other running cost are being borne by the state government.²⁰

It is quite a fact that different state governments fund the Nigeria police force. A vivid example of this was when the Lagos State Governor Raji Fahola presented 114 security patrol vehicle, 40 motorcycles, and other security items to the Inspector General of Police²¹. In the same vein, Governor Kayode Fayemi of Ekiti State said, he would continue to fight for the creation of state police. Citing examples of federal states like Canada, India and everywhere there is federation, the police exist at the local level, even at city level. He stated:

They do different work, and the work is complimentary and also in many of the states I have highlighted they have a single training institution so the training is regularized. In India, the police academy in Hyderabad, trains people both at the local level, provincial level and at the federal level²².

And reacting to the spate of killing of students at Federal Polytechnic Mubi Adamawa State and at the University of Portharcourt River state, the Senate President, David Mark said he has changed his mind in favour of the creation of state police in the face of what he describe as the perceived failure of the police to stem insecurity in the country. He said:

“We are worried that this has happened, and it is a test case for the police because the video is there for them to identify the perpetrators and they should quickly bring them to book. I was against the state police before but I have since changed my mind. The frequency with which crimes happen in this country and the difficulty the current police have in carrying out their investigation means that there are real security challenges that we must make sure that there are enough policemen that can police this country. The benefit of state police outweighs its disadvantages at the moment.”²³

In their own contribution, Ayinde Adalemo *et al*, opined that with the current security challenges, Nigeria is ripe for state police.²⁴ Also drawing inference from the earlier local government constabulary, they said that they draw their force from those who had lived within the area and so know nearly everyone within the locality. That this factor assisted in quick arresting unruly ones and putting riots under control within a short time. This was likened to the neighbourhood watch in Lagos State, which recruit its staff from within the neighbourhood.

In fact the *Ohaneze Ndigbo*, and Igbo Socio-Cultural Organization has already accused the northern governors of having a form of state police called *Hisbah* guards which operate as policemen. He noted that *Hisbah* guards are saddled with responsibility of enforcing *sharia* law. That these *Hisbah* guards are armed, they have power to waylay, arrest, fine and prosecute their victims, they contended that the Northern Governors funds the *Hisbah* guards with tax payers money. So, if already a semblance of the state police is already being practiced, what stops the rest of the country

²⁰ Kaka Adegoyega “State Police is Solution to Insecurity” (The Punch Saturday Aug. 18, 2012) p.8

²¹ The Punch, Tuesday Sept 11, 2012, p.6

²² Fayemi Kayode, I’ll continue to Fight for State Police (The Punch, Wednesday Sept 12, 2012) p.16. He dismissed the suggestion that Nigeria is not ripe for state police, saying it should be given a chance. He said that security is the first responsibility of any government. He asked why we have a police force that is ill equipped? He said he buys patrol vehicles, bullet proof cars, pay for insurance and allowance and that the other 35 state governors does same in their states. He opined that it will be contradictory for them to fund the police and for it not to be under their control and direction as the who plays the piper ought to dictate the tune.

²³ See the punch, Wednesday Oct. 10, 2012. p.2.

²⁴ Adeleomo Ayinde, Ibidapo-Obe Oye and Aroloye Andrew, Nigerian needs a decentralized police force (The Punch Tuesday Oct. 16, 2012) p.21

from practicing one²⁵. Having discussed though briefly, the argument for and against state police, it is now incumbent on this writer to discuss the way forward out of logjam.

State Police to be or not to be: The Way Forward

There seems to be a general agreement on both sides of the debate that there is a need for police reform in Nigeria because the current policing practices are in-effective and inconsistent with the establishment of enabling society where democratic principles, economic and political development can take root. The point in contention is over how and when the reform should proceed. Those opposed to state police have argued that although reform of the Nigeria police force is necessary, Nigeria is not ready because state Governors will use the police to forward their own agenda, among other things.

Not only do argument against state police represent a scare tactic they are nothing but sophistry, convoluted and spurious. For example, the readiness argument is reminiscent of opposition to creation of more regions, prior to civil war, the argument for and against independence, which gave the Western Region of Nigeria self-determination in 1957 when the other part said they were not ready before the actual independence of Nigeria in 1960.

State police should be conceptualized in the same frame. It should therefore be seen as that last bastion on the path to true democracy and federalism in Nigeria. It should not be made or continue to remain a frontier to be conquered, or a byproduct of change. Policing is actually an impetus to change especially in a developing society like Nigeria. The police power is synonymous to power of the purse. Whoever controls either is really in control.

Nigeria should not allow the paradoxical theory of change "I will remain the same until the pain and stain outweigh the pain of change, I will change"²⁶. After all as we have the Federal Road Safety Corps (FRSC) at the federal level nearly all the states of the federation has their traffic control outfit, for example, it is called Kwara State Traffic Management Agencies (KWATMA) while it is called in Lagos State LASTMA.

The armed forces viz; Navy, Air force and the Army are all controlled by the federal Government. The Nigeria Civil Defence Corps is also under the control of the federal government. The well to do, have private body guards, then the states are also matured enough to have their own security outfit. Above all, crime prevention and control must be information and communication technology (ICT) driven. Criminals have since developed methods and practices hitherto unknown in Nigeria. Close Circuit Television (CCTV), modern communication gadgets, training and retaining of police personnel at the national and state levels should be stepped up. New and improved welfare packages for the personnel must be introduced and reviewed upward biannually. The bad eggs among the police personnel must be shown the way out.

Conclusion

In this paper we have considered the argument for and against the creation of state police. We have also considered what federalism actually means and the practices of some federating states like Nigeria in the area of state police formations. Mention has also been made of pre-colonial and early days of independent experience when there was Local Government constabulary.

It is suggested strongly that the time is ripe for state police. It should be added that for the sake of uniformity, we can still maintain the same training School and hierarchical order of seniority etc. The role of the police is to prevent and reduce crime improve law enforcement and administration of justice and promote public safety. If these are what the police are doing Nigeria now, then we can afford to wait, otherwise the time for state police is now.

²⁵ The Punch Monday, Sept 3, 2012, p.12

²⁶ Inyang Enobong J.; State Police, the Hamlets' Dilemma (The Punch Thursday, Oct. 11, 2012). p.20. The proper and desirable step is a proactive, vicarious step in the form of a political will to address the elephant in the living room that is never going to go away by itself because of perplexity and inaction.