THE RESTRUCTURING DEBATE: THE MISSING LINKS IN NIGERIA'S FEDERAL STRUCTURE

[1]ROBINSON MONDAY OLULU, *Ph.D* AND
[2]UDEORAH, SYLVESTER ALOR F. *Ph.D*
[1,2]Department of Economics, University of Port Harcourt, Nigeria

Abstract
This work aim at narrowing the options, identify sectors of priority and the procedure to restructure the Nigeria federation. The work address two issues: (1) the constitutional reforms embarked by the federal government to restructure Nigeria; and (2) to ascertain whether past efforts to restructure have provided answer to the agitation for restructuring. The descriptive survey method of analysis was deployed to analyse returned questionnaires. The purposive sample technique was applied, while the simple percentage, the mean, standard deviation and the z-test are deployed in the analysis. Findings of the research reveal that past efforts in restructuring the Nigerian polity yielded little benefits and have not discouraged the agitation for a more equitable federal structure. The researcher recommends, fiscal restructuring and devolution of powers to the federating units as key to successful restructuring of the Nigerian federation. To achieve this, leaders must have the political will, some parts of the country must not mistake restructuring to balkanization of the country. Debate, seminars and conferences must continue to enlighten citizens on the need to restructure the Nigerian polity through constitutional means.

Keywords: *Restructuring, Federalism, Constitution, Fiscal federalism, Devolution of powers*

Introduction

The word restructuring is multifaceted and mean different things to different people in the political class, the academia, regions and zones that constitute the Federal Republic of Nigeria. While most Nigerians believe that certain aspects of the federal structure need reforms; there is yet no harmony on the direction, modality, sectors and time to restructure. In the restructuring debate, some groups emphasise the fiscal imbalance and resource control, other groups consider the restructuring of the minds of Nigerians, yet some are more

concerned about devolution of powers and lastly those thinking of administrative restructuring.

Obaze (2018) opined that Nigeria must avoid default restructuring. This is to say that restructuring must be adequately planned in order to avoid situations that will result to regrets by Nigerian. In fact, in the view of Obaze; Nigeria as a federation needs restructuring which is based on agreement, formulated carefully not to disintegrate the federating units. The restructuring debate or discuss is as old as the unpopular decision of the British government to pull together the culturally heterogeneous and semi-independent groups of the Niger basin in what was called Amalgamation of 1914. It culminated to the Littleton Federal Constitution (Littleton, 1954). The amalgamation policy of the British administration was not planned, and it had obvious defaults hence, the debate for restructuring rages on.

Mills commented that:

> There should not be any one unit so much more powerful than the rest as to be capable of vying in strength with many of them combined. If there be such one, it must insist on being master of the joint deliberations; if there be two, they will be irresistible when they agree, and whenever they differ, everything will be decided by a struggle for ascendency between the rivals. The size of the unit concerned is - in wealth, area and population - is therefore of prime importance. There must be some sort of reasonable balance which will ensure that all the units can maintain their independence within the sphere allotted to them that no one can dominate the others (Mills, 1901).

The excerpt above indicates some of the important issues in contention with the restructuring debate many years after Nigeria's independence. No doubt, a lot of constitutional and political conferences have been held to stabilize the federation with one reform culminating into further debates about the structure of Nigeria. In a lecture on the occasion of the celebration of Rivers State

Golden Jubilee, Godini (2017) stated that Gowon created the 12 States in 1967 paramountly to achieve structural federalism.

Godini quoted Gowon as saying that:

> …the main obstacle to future stability in this country is the present structural imbalance in the Nigerian federation… This is why the item in the political and administrative programme adopted by the Supreme Military Council… is the creation of States as basis for stability… (Godini, 2017).

It must be noted that between 1976-1978, Murtala Mohammed created more states. Olusegun Obansanjo approved the change from the British parliamentary system to the American presidential system in 1976. Indeed, Olusegun Obasanjo promulgated the Land Use Decree. Akpo writing on the challenges of federalism in Nigeria observed that the introduction of the presidential system of government was to strengthen the local government structure and allow for vertical revenue sharing (Akpo, 2002).

In 1981, Shehu Shagari established the federal character principle in appointments, while Babangida liberalized the economy, cancelled the derivation principle, created the Federal Revenue Mobilization and Fiscal Commission, and the two party system. Abacha created 6 additional states and local governments, while Abdusalami drafted the 1979 Constitution and removed the local government autonomy. Obasanjo in his civil rule, restored the 13 per cent derivation for mineral producing states, created Ministry of Niger Delta. Jonathan, 2010-2015, midwifed the 2014 National Conference. In his inauguration address, the former President highlighted the issues of the national conference as:

> The form of government, structures of government, devolution of powers, revenue sharing, resource control, State creation, State police and fiscal federalism, indigeneship, gender equality and children rights… (Godini, 2017).

Today the debate for restructuring seems not to abate, particularly now that part of the conservative north have joined the fray. Opinion leaders like Balarabe Musa, Paul Unongo, Dr. Junaid Mohammed, Tanko Yakassai, Bashir Dalhatu all from the north are now apostles of restructuring. Steven (2017) also observed that Atiku while launching the Daily Stream Newspaper had in fact listed certain items he must focus to restructure Nigeria. These include devolution of powers to the States, reduction in federal government exclusive list (87) and favouring concurrent list (15). The restructuring will also include developing an indigenous model of fiscal federalism, autonomy of the local governments, state police and resource control. Atiku also emphasized on restructuring administratively. In fact, from Atiku's point of view, the debate on restructuring had not abated. It therefore, needs to be resolved.

Just as the debate gets more intense and interesting, there is the need to position, enlighten and assist individuals and groups get qualitative information. The essence is to also make stakeholders understand the main issues in the contention for restructuring. The Northern part of Nigeria will not oppose restructuring if it is the only condition for development. President Buhari is indeed confronted with this age-long debate. He commented that too many people talking lazily about restructuring in Nigeria, showing that not even the president has full grasp of restructuring in the Nigeria context.

The Vice President of Nigeria had his view on the debate of restructuring which seem contrary to the position of the President. To Osinbajo, restructuring Nigeria would involve devolution of powers to the federating units to enable them control their own administrative decisions, such as the creation of councils and community police including special courts. The vice president in essence did not reject restructuring strictly speaking (Augustine and Mordi, 2018).

Adebayo (2017) posits that what is needed to be structured is the mindset of Nigerians and he referred to it as the mother of all restructuring. As condition to the survival of Nigerian state, the restructuring debate must be narrowed, focused and items to restructure must be carefully presented.

This work addresses two basic questions. What are the constitutional reforms embarked upon by the various administrations to address the question of fiscal imbalance and devolution of powers in Nigeria? Has restructuring efforts in the past provided answers to the agitation for fiscal federalism and devolution of powers in Nigeria?

This paper is divided into six parts. The second part is the conceptual framework, the third is the literature review, the fourth is the methods of analysis while the fifth is the data presentation and analysis and finally we have conclusion and recommendations.

Conceptual Clarifications

Restructuring

The Black's Law Dictionary defined restructuring as a fundamental and sometimes drastic change that will alter the relationships within a company or with other companies. The Oxford Advanced Learner's Dictionary, describe restructuring as, the re-organize of something such as a system or a company in a new and different way. This implies that restructuring of a body polity such as Nigeria will involve changing the system to achieve a smooth, but effective system of administration and governance. The concept of restructuring was summarized by the former President, Goodluck Ebele Jonathan in his opening address to members of the 2014 National Conference at Abuja. He said the issues involved are;

> …the form of government, structures of government, Devolution of powers, Revenue sharing, Resource control, State creation, State police and Fiscal federalism, Indigeneship, Gender equality and Children's right… (Obaze, 2018).

Restructuring implies fundamental alteration in the aforementioned issues and related matters. The aim is to produce a more enduring and practical federal structure that will liberate the materials and manpower resources that nature has endowed Nigeria.

Restructuring however is in different forms. They are Fiscal restructuring, Administrative restructuring, Geographical/regional restructuring, Devolution of powers from the centre to the federating units and mindset restructuring.

Fiscal restructuring refers to economic/resource control and sharing among the various tiers of government in a federation. Mimiko (2018), writing on fiscal federalism and restructuring in Nigeria, observe that in federal system, the federating units exploit their resources and pay tax for the maintenance of the government at the centre.

Administrative restructuring connotes policy adjustments/changes in the various sectors of the federation. Geographical/regional restructuring involves delineation of geopolitical boundaries in a federation. It is on this premise that Moghalu (2018) opined that trade, manufacturing and investment will flourish across the regions if Nigeria is restructured.

Devolution of powers is the division of powers among the federating units, and coordinates supremacy of the various tiers with their constitutional functions.

Restructuring of the human minds in this context, is the mind-set of Nigerians about Nigerian State, their affiliation, sense of belonging and patriotism is called to question. Eliciting through national orientation, equality of opportunities among citizens, will go a long way to arouse in citizens the sense of nationhood and patriotism.

The indispensability to restructuring Nigerian federation, hinges on a number of reasons: The security implications, competitiveness among the federating units, education, agitation/militancy, education and protection of minority rights (Ogih, 2017).

Fiscal Federalism

Fiscal federalism is a by-product of federalism. Federalism is a concept in which power to govern is shared between the centre and federating units creating what is often called a federation. It is a political theory that is multifaceted, varies in ecology and dynamic in practice. Federalism implies

that each tier of government is coordinate and independent in its own areas of authority and should also have required taxing powers to exploit its independent sources of revenue. Fiscal federalism requires that each level of government should have adequate resources to perform its functions without resorting to the other level of government for financial assistance (Akpo, 2002).

For any federal system to be sustained there must be fiscal decentralization and financial autonomy. Fiscal decentralization means delegating decision-making to lower levels of government instead of concentrating it at the centre. The federating units should be free to take decisions and allocate resources according to its own priorities in its own area of jurisdiction. In addition, the federating units should be able to act without interference on matters within their own areas of authority.

Understanding which responsibilities and instruments are best centralized and which are best placed within powers of the federating units is very important. Fiscal federalism is a general normative framework for the assignment of functions to the different levels of government and appropriate fiscal instruments for carrying out these functions. It is a set of guidelines that assist in designing fiscal relations between the national and the governments of the federating units, while fiscal decentralization is the process of applying such guidelines. Put differently, federalism is the division of public sector functions and finances among different levels of government. Fiscal federalism is thus characterized by fiscal relations between the central and lower levels of government. The fiscal relationship between the federating units is explained in terms of three main theories, namely, the theory of fiscal relation. This theory discusses the functions expected to be performed by each level of government in the fiscal allocation. The theory of interjurisdictional cooperation; examines areas of shared responsibility by the centre and the federating units, and local governments, and the theory of multijurisdictional community. In this case, each tiers of government provides services whose benefits will accrue to people within its boundaries.

Devolution of Powers

Devolution of powers can be described as division of powers among tiers of government and coordinate supremacy of the two levels of government with respect to their constitutional functions which is important to efficient functioning of a federal system.

Division of powers in a federal State must be inserted in the constitution; Wheare (1971) advanced three major reasons for legal underpinning of power divisions among the tiers of governments in federalism.

> Since federal government involves a division of functions, and since the State forming the federation are anxious that they should not surrender more powers than they know, it is essential for a federal government that there be a written constitution embodying all governmental authorities throughout the federation. To further consolidate the division of powers between the tiers of government, the power to amend the federal constitution must lie in the hands of both the government at the centre and the federating units. Lastly, in the case of dispute between the centre and the State governments as to the extent of power allocated to them under the constitution, there is need to have apex court to adjudicate on such disputes.

In the Nigerian context, the question of power relationship between the federal government and federating units has become a thing of concern. The fact is that contrary to the classical principle of 'coordinate power' in a federal system, the government at the centre in Nigeria has been increasingly encroaching on the sphere of powers of the State. This trend has continued because the Nigerian federal structure is lopsided and has enormous powers at the centre that hold for itself, a greater percentage of share of the national revenue and allocates it through the parochial and unimaginative prism of its fatherly attitude.

The situation is made worse when it comes to issues of financial relationship between the federal and the State governments; the federal retains more

resources. The federating units lack instruments and powers to raise money for its developmental projects and maintenance.

Dare (1979) puts it in perspective when he argues that:

> If the government authorities in a federation are to be really co-ordinate with each other in actual practice as well as in law, it is essential that there should be available to each of them, under its own unfettered control, financial resources sufficient for the performance of the functions assigned to it under the constitution.

It is only when powers is devolved to the federating units that the States will be able to raise the needed taxes, and exploit its natural resources to fund its government and projects for the good of the people.

Theoretical Framework

The theory of fiscal federalism was propounded by Kenneth Arrow, Richard Musgrava and Paul Samuelson. According to Musgrave (1989), the government have critical role to play in economic development, hence the need for fiscal equalization in a federal system. To achieve economic growth in a federation, there is need for lump sum transfer of resources from the central government to the federating units. Equalization is in two aspects; the first is based on Efficiency Criteria. Efficiency Criteria considers equalization as a way of correcting for distorted migration patterns as well as provide assistance to poorer regions or jurisdictions. Equalization is an important convention in the Canadian federal system of government.

There are demerits of decentralization in a federal system. These are some of the reasons that limit growth in governments, particularly in the developing countries. Scholars have argued that corruption may be more common at the local level, than at the national level, especially in the developing countries. Reasons being that the absence of arms length relationships is assumed to be more pronounced at the local level. But by virtue of their limited powers, it is difficult for local officials to engage in enormous corruption schemes, whereas a corrupt minister of a central government may be able to do massive harm.

The logic applies to Nigeria where the local councils are assigned limited funds to execute their projects; moreso the fund comes to council at the mercy of the state governors. This explains why councils in Nigeria have limited corrupt cases compared to the state and the federal government. Quality of local bureaucracies is another argument raised against resource decentralization in a federal system.

The federal government attracts more qualified personnel, because it offer better careers and remunerations. The limited number of local bureaucrats, is a major constraint to decentralized government. Other factors that negatively affect decentralization especially at the lower levels governments; include lack of facilities and manpower that can plan and generate the needed revenue to sustain its own budget. There is also the challenge of regulatory guidelines in areas of expenditure, particularly in auditing the local governments to achieve accountability and good governance.

Fiscal federalism, under which provision of public goods is decentralized to subnational governments, allows for public-goods to be tailored to suit the preferences of a non-homogenous population. This beneficial outcome is achieved via sorting of individuals into demand-homogeneous jurisdictions, each of which provides a different amount of public good, The drawbacks of federalism, which have also been noted in the literature, include the sacrifice of large scale economies due to smaller jurisdictive sizes, losses from interjurisdictional tax competition when government revenue comes from taxation of a mobile tax base, and failure to properly account for public-good spillovers across jurisdictions all constitute draw-backs to resource decentralization in a federal system of government (Ekpebu, 2008).

The function of government is categorized into: Macroeconomic Stabilization, Income Redistribution, and Resource Allocation. There seems to be a consensus about assigning the first two functions, Stabilization and Redistribution, to the Central government. But its been argued that at the subnational level fiscal policymaking jeopardizes macroeconomic stability. But the gains from fiscal decentralization in a federal system cannot be overemphasized.

The argument in favour of decentralization stems from motivation for enhanced efficiency, accountability, and autonomy. A representative government works best when it is closer to the people. Carrying the argument further, A. Shleifer formulates the decentralization theorem. He said each public service should be provided by the jurisdiction having control over the minimum geographic area that would internalize benefits and costs of such provision.

It is argued that the correlation coefficient between local governments spending and GDP partly supports decentralization theorem. In the developed countries, where local governments are more responsive to constituents, there is a high positive correlation between GDP per capita and local government spending. On the other hand, in developing countries, the correlation coefficient is very low, even negative.

Again, that the policies of subnational branches of governments should be permitted to differ in order to reflect the preferences of their residents. In this analysis, local governments have better information about their residents needs therefore they can use public resources more effectively than central government. A decentralized system is expected to respond better to local preferences and needs, promote competition among local units in the provision of public goods and services. Efficiency improves as supply adjusts to demand (Yilmaz, 2012).

It is observed, that if greater decentralization increases the number of alternative fiscal jurisdictions, any attempt to increase tax rates in one jurisdiction would result in migration of its residents to another jurisdiction. Taxpayers migrate to alternative jurisdictions in order to avoid higher taxes and interjurisdictional competition limits excessive taxing power of the governments.

The classic administrative view of government fragmentation is that it would cause uncoordinated service delivery, loss of economies of scale, deterioration of accessibility and accountability, and private interests making key public decisions.. Also, the literature on intergovernmental relations pays attention to

cooperation among levels of government. Traditionally, public economists also argue that interjurisdictional competition to retain and attract residents and businesses is at best a zero-sum game.

Decentralization in practice appears to have a mixed track record, and countries such as Brazil, Argentina, and Nigeria are cases in point. For example, they argue that decentralization can increase interregional disparities because national policies designed to connect disparities will be limited, or decentralization might lead to the under provision of fiscally induced stabilization policies.

The History of Nigeria's Constitutional Development

Federalism in Nigeria can be traced to the Macpherson Constitution of 1951. The 1951 Constitution was a clean break from the Richards Constitution of 1946, which enthroned the principle of Regionalism. The centre was divested almost completely of any powers in contradistinction to the Regions, which thus became major political players in the administration of pre-independence Nigeria. Under the 1951 Constitution, the Regional houses were given powers to legislate on certain items, the executive councils were also given the power to implement on some matters. It is the clear set-up of the regions with powers in political and administrative matters that signals the evolution of federalism in Nigeria. The 1951 Constitution was a watershed in federal constitution, with representatives of government from the people and therefore legislations truly from the people's representatives.

Macpherson Constitution of 1951

The important propositions of the Macpherson Constitution includes: Increased Regional autonomy within a united Nigeria; larger and more representative legislature with wider powers to be created both in the Regions and at the centre. In other words, political, administrative and legislative powers were devolved to the Regions from the central Government. Nigerians, were to form the majority in each legislative house to be given full share in the responsibility of shaping government policies and in the direction of executive action.

Akpo, quoting Anyanwu (1999), noted that:

> Through nationalist pressure and colonialist accommodation, the Macpherson Constitution attempted to correct some errors in the Richards Constitution. Under the Macpherson Constitution, the Regional Houses of Assembly were, for the first time, given legislative authority on certain matters. Executive authority was also assigned to the regions on matters within their legislative competence. This necessitated the creation of executive Councils in the regions, a structure which had been instituted in the centre since the colonization of Lagos. The political and administrative institutionalization of the regions enhanced the evolution of a federal structure in Nigeria.

With the fundamental reforms of the Macpherson Constitution, the federal system of government was set to take off in Nigeria. The regional houses were for the first time given legislative authority, while the executive powers were given the regions on matters within their legislative competence. Other federal characteristics of the 1951 Constitution includes:

i. The establishment of a Supreme Court for the Federation of Nigeria to be known as the Federal Supreme Court. It replaced the old Supreme Court established as far back as 1934 in a unitary system of government. The new Supreme Court was to be essentially a Court exercising an appellate jurisdiction hearing appeals from the Regional High Courts. In that respect, it replaced the old West African Court of Appeal hitherto a Court of Appeal for all British West African Colonies of the Gambia, Sierra Leone, The Gold Coast and Nigeria. The Supreme Court was essentially a Nigerian Court. It had original jurisdiction on constitutional matters referred to it. The Chief Justice of Nigeria was the President of the Supreme Court;
ii. There was also established a High Court for each of the three Regions of the Northern, the Western and the Eastern; a Regional Judiciary each with a Chief Justice and a Judicial Service Commission with a

full complement of Judges. The Chief Justice of a Region was appointed by the Regional Governor after consultation with the Chief Justice of the Federation of Nigeria;

iii. There was also in each Region the Regional Magistracy as well as the Customary Courts establishment which were regarded as falling within the residue of powers and functions;

iv. There were set up Public Service Commissions both for the Federation and for each of the Regions. It was the duty of the Commission to recruit personnel for the Services in the Federation in the case of the Federation; and in the Regions in the case of each Regional Commission.

v. On the basis of Montesquieu's doctrine of separation of powers, there was created separation of powers between the legislature and the judiciary.

vi. Each Region was granted a kind of regional autonomy. Consequently, each Region was treated as a separate, independent country, which had willingly surrendered part of its sovereignty to the central or federal government and its legislature.

It is worthy to note that minority leaders stood firmly against the abandonment of devolution of powers and function from the centre to the Regions. This is still the basis upon which the recent clamour for true federalism in Nigeria is founded. No doubt in order to achieve true federalism, there must be substantial devolution of powers and functions from the centre to the States in a federation.

The Lyttleton Constitution of 1954

The 1954 Lyttleton Constitution concretized the fundamentals of true federalism in Nigeria. The Constitution granted each Region its autonomy from the powerful centre. The Regions were treated as separate, independent countries, which willingly surrendered part of their sovereignties to the centre. This is the principle of true federalism and it is the pillar upon which the federal structures of true federations were all built. Examples are the United States of America, the Canadian Union, Australia, India and Pakistan. According to Anyanwu (1999),

> The Constitution was a product of the 1953 London Constitutional Conferences, in which Nigerians participated actively, and the Lagos Conference of 1954, which involved all political parties in Nigeria, and the Secretary of the State. It was the Lyttleton Constitution, which made Nigeria truly Federation. The Federal System had positive implication for the development of a bi-cameral legislature at the federal level. The Constitution for the first time provided for residual, the executive, and the concurrent lists.

Some of the features that pointed towards federalism under the 1954 Constitution are:

(i) There was established a Supreme Court for the Federation of Nigeria to be known as the Federal Supreme Court. It replaced the old Supreme Court established as far back as 1934 in a unitary system of government. The new Supreme Court was to be essentially a Court exercising an appellate jurisdiction hearing appeals from the Regional High Courts. In that respect, it replaced the old West African Court of Appeal hitherto a Court of Appeal for all British West African Colonies of the Gambia, Sierra Leone, The Gold Coast and Nigeria. The Supreme Court was essentially a Nigerian Court. It had original jurisdiction on constitutional matters referred to it. The Chief Justice of Nigeria was the President of the Supreme Court.

(ii) There was also established a High Court for each of the three Regions of the Northern, the Western and Eastern; a Regional Judiciary each with a Chief Justice and a Judicial Service Commission with a full complement of Judges. The Chief Justice of a Region was appointed by the Regional Governor after consultation with the Chief Justice of the Federation of Nigeria.

(iii) There was also in each Region the Regional Magistracy as well as the Customary Courts establishment which were regarded as falling within the residue of powers and functions.

(iv) There was set up Public Service Commissions both for the Federation and for each of the Regions. It was the duty of the Commission to recruit personnel for the Services in the Federation in the case of the

Federation; and in the Regions in the case of each Regional Commission.

(v) On the basis of Montesquieu's doctrine of separation of powers, there was created separation of powers between the legislature and the judiciary.

(vi) Each Region was granted a kind of regional autonomy. Consequently, each Region was treated as a separate, independent country, which had willingly surrendered part of its sovereignty to the central or federal government and its legislature.

To achieve true federalism, there must be substantial devolution of powers and functions from the centre to the States in a federation.

Adebayo noted that:

> By 1954, when the Lyttleton Constitution emerged, a federal system of government was adopted by consensus. The Constitution among other things, guaranteed the sharing of power between the centre and the federating regions. It also recognized each set of authorities as co-ordinates (with the centre) and not subordinates.

The 1960 Constitution and Federalism

In order to have a firm grasp of the extent of federalism in any country or nation that operates a written Constitution, it is imperative to first examine the Exclusive Legislative List, Concurrent Legislative List and where applicable, the Residual List of the Constitution.

In simple terms, the Exclusive Legislative List relates and deals on matters exclusively reserved for the Federal Government of the country. The Concurrent Legislative List is concerned with equal power sharing between the Federal and States; whilst the Residual List is usually reserved for the States. Upon a careful and holistic perusal of the provisions of the 1960 Constitution, it is very lucid that the colonial masters succeeded more than ourselves in enthroning true federalism in Nigeria before their exit.

The 1951, 54 and 1960 Nigerian Constitutions satisfied the minimum requirements for a federation. According to Nwabueze ( ),

> Federation is an arrangement whereby powers of government within a country are shared between a national, country-.wide government and a number of regionalized (i.e. territorially localized) governments in such a way that each as a government separate and independently form the others operating directly on persons and property within its territorial area, with a will of its own apparatus for the conduct of its affairs and with an authority in some matters exclusive of all the others.

The 1960 Constitution guaranteed Regional Constitutions, census, arms and ammunition, Control and voluntary movement of persons between territories, higher education, traffic On federal trunk roads, prisons and other institutions for the treatment of offenders and a Blanket provision for industrial development.

With these items on the Concurrent Legislative List of the 1960 Constitution, it is trite that a Region indirectly was granted the status of a Republican Government, albeit the fact that it was not expressly stated in the Constitution like that of the United States of America. A Region which is empowered to legislate on arms and ammunition, census, movement of persons between territories, registration of business names, scientific and industrial research and industrial development (to mention but a few), is afortiori a small Republic itself having the powers to set up and maintain a State in international law, though without an internationally recognized Police Force, Army and other organs of the armed forces. But the power to legislate on arms and ammunitions can be argued to be incidental, or inclusive of the power to establish a Regional body for the manufacture and operation of same. This view is supported by item 28 in the Concurrent Legislative List, which gives the Region a carte blanche power in respect of: “Any matter that is incidental or supplementary to any matter referred to in this List.”
The 1960 Constitution provides thus:

i. There shall be paid by the Federation to each Region a sum equal to fifty per cent of:
   (a) the proceeds of any royalty received by the Federation in respect of any minerals extracted in that Region; and
   (b) any mining rents derived by the Federation during that year from within that Region.

ii. The Federation shall credit to the Distributable Pool Account a sum equal to thirty per cent of -
   (a) the proceeds of any royalty received by the Federation in respect of minerals extracted in any Region; and
   (b) any mining rents derived by the Federation from within any Region.

iii. For the purposes of this section the proceeds of a royalty shall be the amount remaining from the receipts of that royalty after any refunds or other repayments relating to those receipts have been deducted there from or allowed for.

iv. Parliament may prescribe the periods in relation to which the proceeds of any royalty or mining rents shall be calculated for the purposes of this section.

v. In this section "minerals" includes mineral oil.

vi. For the purposes of this section the continental shelf of a Region shall be deemed to be part of that Region.

135 - There shall be paid by the Federation to the Regions at the end of each quarter sums equal to the following fractions of the amount standing to the credit of the Distributable Pool Account at that date, that is to say -

(a) to Northern Nigeria, forty ninety-fifths;

(b) to Western Nigeria, twenty-four ninety-fifths;

(c) to Eastern Nigeria, thirty-one ninety-fifths.

136 - Each Region shall in respect of each financial year pay to the Federation an amount equal to such part of the expenditure incurred by the Federation during that financial year in respect of the department of customs and excise of the Government of the Federation for the purpose of collecting the duties referred to in sections 130, 131, 132 and 133 of this Constitution as is proportionate to the share of the proceeds of those duties received by that Region under those sections in respect of that financial year."

The germane portion of these sections is section 134(6) thereof which provides that: "For the purposes of this section, the continental shelf of a Region shall be deemed to be part of that Region."

This is loosely speaking what is called resource control. The Region or State wherein the continental shelf is located should be empowered by legislation (as above) to benefit from the natural resources located therein. Consequently, the present call for resource control is not new. In point of fact, it was the plank upon which Nigerian sovereignty rested on October 1, 1960 by virtue of the Nigeria (Constitution) Order in Council, 1960.

The 1963 Republican Constitution and Federalism

As has been hitherto observed, there are really no significant changes in the 1963 Constitution, save for the nomenclature of the Queen and the finality of the decisions of the Supreme Court of Nigeria. Accordingly, Nigeria became a legal sovereign and its appeals no longer lay from the Supreme Court of Nigeria to the Privy Council of the House of Lords in the United Kingdom.

As regards the items listed in the respective Legislative Lists, it appears that they are (Ipsisima verba) with those contained in the 1960 Constitution. The items under the Exclusive Legislative List remained 44; whilst those in the Concurrent Legislative List remained 29. Having enacted the Niger-Delta Development Board Act of 1961, section 14 of the 1960 Constitution was naturally expunged from the 1963 Republican Convention, although similar provisions were re-enacted in section 159 thereof as regards the composition and structure of the Niger-Delta Development Board. The principles of high derivation and loose resource control under sections 134 and 134(6) of the 1960 Constitution were retained under sections 140 and 140(6) of the 1963 Constitution respectively.

Although the 1960 Constitution provided for fiscal autonomy of some sort, the Republican Constitution lucidly spelt out certain powers, which will be exercisable by the Government at the centre and the Regions themselves.

True federalism implies mutual respect for the federating units and not one of perpetual dominance by the Government of the centre or any of the States in

the union. As matter of fact, the States are major players in the political, social and economic scheme of events.

The 1963 Constitution empowers a Region to legislate for the President or the Federation indirectly. That section provides thus:

> A law enacted by the legislature of a Region may include provision conferring powers or imposing duties, or authorizing the conferring of powers or the imposition of duties, upon the President or any officer or authority of the Federation: Provided that no provision made in pursuance of this subsection, shall have effect unless the President has consented to its having effect.

The wordings of section 100(2) of the 1963 Republican Constitution and that of Amendment X of the 1791 in the Constitution of the United States of America are different, they are nevertheless unified by the same philosophy of State or Regional autonomy as exemplified in a true federalism. The 1960 Independence Constitution as well as its 1963 Republican counterpart remain the foremost and only Constitutions in Nigerian history which have enshrined the principles of true federalism, resource control and fiscal autonomy to the Regions and/or States.

The 1999 Constitution and federalism

The 1999 Constitution of the Federal Republic of Nigeria, do not provide the needed ingredient for true federalism in Nigeria. Like its disguised constitutional counterparts in 1979 and 1989, it is a civilian version of Decree 34 of 1966. The unitary features of the 1999 Constitution are hereby reproduced hereunder, thus:

(i) Section 213, creates a centralized body for census i.e. National Population Census Commission. Under a federal structure as practiced in the 1960 Independence and 1963 Republican Constitutions, census was placed on the Concurrent Legislative List, thus empowering the Regions to legislate on same.

(ii) Section 214, also creates and retains the centralized police force.

(iii) Section 237, still empowers only the Federal Government to set up a Court of Appeal. The States ought to be empowered to set up their own appellate Courts, which will only be subordinate to the Federal Supreme Court. Suffice it to say that in furtherance of the principle of true federalism, States are empowered to establish their own Sharia Court of Appeal under section 275 thereof.

(iv) Section 271, still provides for the appointment of Judges to State High Courts subject to recommendation by the National Judicial Council.

The 1999 Constitution further empower National Judicial Council to:

(v) recommend to the Governors from among the list of persons submitted to it by the State Judicial Service Commissions person for appointments to the offices of the Chief Judges of the States and Judges of the High Courts of the States, the Grand Kadis and Kadis of the Sharia Courts of Appeal of the States and the Presidents and Judges of the Customary Courts of Appeal of the States;

(vi) recommend to the Governors the removal from office of the judicial officers.

(vii) empowers the council to collect, control and disburse all moneys, capital and recurrent, for the judiciary.

However, the Secretary of the Council is to be appointed without any input from the States. This directive is contained in section 22 thereof which provides that: 'The Secretary of the Council shall be appointed by the National Judicial Council on the recommendation of the Federal Judicial Service Commission and shall be a legal practitioner'.

The provisions identified are anti-federalism, and they remain the vexed issues of the Nigeria federal structure.

Public revenue under section 162(1)-(9)

Federalism is defined empirically at the fiscal realm of governance. The extent of fiscal autonomy under the regulatory laws, determines the level of federalism in a particular Union. The 1999 Nigerian Constitution prescribes a quasi-federal political structure, where the national assembly and the federal

executive council are most powerful and dictate the economic development of component units of the State.

The National Assembly to large extent deliberate and protect all the stakeholders in the Federation ranging from the Federal Government itself to the States and Local Government Councils. What is paid to resource producing states are mere compensation. By S. 44(3), states cannot control their resources:

> 44.-(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

This section centralizes and arrogates the entire property in and control of all minerals in the Government of the Federation to be managed as directed by the National Assembly. The State Houses of Assembly are expressly barred from making any legal input on how to control and regulate their resources.

S. 163 also provides that tax or duty imposed in respect of any of the matters specified in item D of Part H of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly — (a) where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State; (b)where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State as such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State (CFRN).

The questions that arose are? Why is it the National Assembly that will determine the amount of tax collected on behalf of a State, to be paid to the State? Why can't the Government of the Federation and the respective States enter into a memorandum of understanding on how to deal with such taxes collected?

S. 2(2) of the 1999 Constitution

These Sections provides thus:

> 2. (1) Nigeria is one indivisible and indissoluble sovereign State to be known by the name of the Federal Republic of Nigeria.
>
> (2) Nigeria shall be a Federation consisting of States and a Federal Capital Territory.

Akpo, quoting Williams noted that:

> For what is worth, my personal opinion is that the 1999 Constitution is not properly structured in terms of the federal unit. Another important aspect of our past constitutions is that far too much powers are vested in the Federal Government. Also, the formula for revenue allocation requires re-examination in the light of a federal government with reduced powers in comparison with federal units with increased powers and responsibilities.

No doubt, the 1999 Constitution is encumbered all through by anti-federal provisions, and centralization of state assignments.

Other Practices of Government that Inhibit Federalism since 1999

The Universal Basic Education (UBE) - This is a programme, which the President Olusegun Obasanjo resuscitated as practiced under his military regime. Section 30 of the Concurrent Legislative List in Part II of the Second Schedule provides:

> Nothing in the foregoing paragraphs of this item shall be construed so as to limit the powers of a House of Assembly to make laws for the State with respect to technical, vocational, post- primary, primary or other forms of education, including the establishment of institutions for the pursuit of such education.

The State is empowered to legislate and regulate the establishment and activities of primary schools within their domain. The Federal Government has no constitutional authority whatsoever to hijack and centralize any power to regulate primary schools activities in Nigeria, nor power to withhold the salaries of the teachers of primary schools in Nigeria. Yet, Federal government is still managing the Universal Basic Education (UBE), spending monies and directing activities in the sector.

Deductions from Source: It is a process whereby the Federal Government deducts from source, alleged financial liabilities from the revenue allocated to a Local Government Council. The Federal Government do not have any constitutional power to tamper with and/or deduct from any revenue allocated to the Local Government Councils by the National Assembly. S. 162(6) enjoins the States to: 'maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State.

By this provision, the federal government is obliged to pay the revenues accruing to the Local Government Councils as approved by the existing law under sections 313 and 315 of the Constitution (or a revenue formula act passed by the National Assembly) into a State Joint Local Government Account without any deductions whatsoever. The practice of deduction from source of monies owed by the federating units by the federal government runs against the spirit of federalism.

The Federal Government has persistently and systematically continued to encroach on the powers, resources, functions and responsibilities of the States and Local Government Councils in Nigeria.

Research Methodology

This paper adopts the descriptive survey design to determine whether restructuring efforts in the past provided answer to the agitation of fiscal federalism and devolution of powers in Nigeria. This design is adopted to precisely and extensively describe the outcome based on sample data. Using the purposive sampling, the researcher identified two groups that have been active in the debate on restructuring. They are the academia, and the ethnic groups. To give a national outlook, the University of Ibadan, Jos and Rivers State University are selected respectively from the West, North and Eastern Nigeria. While the Afenifere Socio-cultural group, the Ohaneze Idigbo and the Ijaw national congress were also selected for investigation.

50 questionnaires were administered to each region mentioned above, making a total of 150 questionnaires nationwide. 20 of the questionnaires were administered to the ethnic group members, while 30 were administered to each university to elicit the views of both the ethnic group and the members of the academia on the critical issue of restructuring, the aim is to ascertain whether restructuring efforts in the past provided answer to the agitation of fiscal federalism and devolution of powers.

The instrument contains 4 items which are used to elicit information from the respondents. The instrument was divided into sections A and B. Section A sort demographic data of the respondents, B, contain items critical to the question of past efforts at restructuring Nigeria. Items in B are arranged for responses in a 4-point Likert scale of Strongly Agree (SA), Agree (A), Disagree (D) and Strongly Disagree (SD). They are presented in 4, 3, 2 and 1 point respectively.

The researcher personally administered the questionnaire on Arewa Consultative Forum, the Afenifere and the Ohaneze Ndigbo Socio-Cultural Organization executive councils Rivers State branch. While colleagues and research assistants administered questionnaire in the University outside Port Harcourt. The mean, standard deviation (SD) are used in all analysis.

Data Presentation

Research Question: Have restructuring efforts in the past swayed the agitation for fiscal federalism and devolution of powers in Nigeria?

Table 1: Combine responses of members of the academia and ethnic groups

S/N		SA	A	D	SD	$\overline{X}$	SD	Dec.
8.	Restructuring efforts in the past have reduced agitation for fiscal federalism	80	20	50	400	1.6	1.08	Disagree
9.	The political restructuring by the military have contributed to the constitutional stalemate in Nigeria	430	70	20	30	3.6	0.67	Agree
10.	Ethnic loyalty has contributed to failure of constitutional conferences in the past	400	50	50	50	3.45	0.98	Agree
11.	Fiscal federalism will marginalize some parts of Nigeria	200	50	50	250	1.6	1.56	Disagree

Source: Author's Computation

Table 1 show whether efforts to restructure the Nigerian polity in the past have reduced agitation for restructuring. Item 8 displayed a mean of 1.6, which is less than 2.5. Here, the respondents are of the view that restructuring efforts in the past have not reduced the agitation for fiscal federalism and resource control. Item 9 had mean of 3.6, meaning that the military kind of restructuring in the past have aggravated the current debate for restructuring. In item 10, the mean value is 3.45, higher than 2.5. Respondents agree that ethnic loyalty has contributed to the failure of constitutional conferences in the

past. Item 11 had a mean value of 1.6 less than 2.5. The implication is that fiscal federalism will not marginalize any part of Nigeria.

Discussion of Findings

Items 8-11 in the questionnaire investigates whether restructuring efforts in the past have reduced the agitation and call for fiscal federalism and devolution of powers. Item 8 with a mean value of 1.6, less than 2.5 indicates that past restructuring exercises, such as the past restructuring exercises, such as the state and local government creation, formation of development commissions like the OMPADEC, NDDC, RBDA, have not reduced the clamour of restructuring of the Nigeria polity. In 2005, the Obasanjo Constitutional reform was aborted at the national assembly, while the 2014 Constitutional Conference of Goodluck Ebele Jonathan administration lived to the extent of the end of the conference.

Respondents in item 9 agreed that the military incursion into Nigeria political space have contributed to the present constitutional stalemate in Nigeria. In order words, all the political reforms of the military only added to the clamour for the further restructuring of the Nigeria polity. At mean value of 3.6, respondents are of the opinion that the series of state and local government creation by the military and all the revenue allocation decrees, such as the Decree 9 of 1971, Decree 10 of 1991 and the establishment of the National Revenue Mobilization, Allocation and Fiscal Commission in S. 140 of the 1979 Constitution and S. 153(1) of the 1999 Constitution have not stopped the clamour for further restructuring the Nigerian polity.

Military in Nigeria, particularly that majority of them are from a particular region in the country, somersaulted the 1963 constitution. Nigerian constitution is virtually a unitary product which its authors from the military have crafted to make things difficult for the smaller ethnic regions.

Item 10 had mean value of 3.45, indicating that respondents agreed that ethnic loyalty has been a major challenge in the past restructuring attempts in Nigeria. The North had always believed that attempts at restructuring will place them at economic disadvantage.

Meanwhile in item 11, respondents believe restructuring the Nigeria polity will not put any section in economic disadvantage. With a mean value of 1.6, respondents debunk the opinion held in the past that restructuring will place certain parts of the country at disadvantage. Almost all parts of Nigeria have arable land for agriculture, solid minerals located in virtually all parts of the country. Restructuring will enhance full exploitation of the nation's natural resources for the good of the people.

On the other hand, Nigeria will optimize the exploration of natural resources. States will be forced to work/or explore natural resources to fund its developmental projects. Every state in Nigeria have the resources to sustain its economy if given the opportunity, through constitutional reforms. In standard federal states, such as the United States, some state specialize in agriculture, while others specialize in entertainment, technology, etc. This is what makes the American economy retain its number one rating in the world economies.

Conclusion

In the restructuring debate, Nigerians have raised critical issues of national concern, if considered and implemented will put Nigeria on the part of economic, social and political growth. Nigerians agreed that fiscal federalism and devolution of powers are critical issues that require attention in the restructuring exercise. It was also agreed that the inability of successive restructuring efforts to address the issues have kept the campaign of restructuring alive and unabated. The abandonment of the 1963 Constitutional provisions on revenue allocation, and S. 140 (6) of 1963 Constitution will continue to leave the country worse for it.

The exclusive to federal government, issues of electricity, labour, mines, minerals and oil fields, natural gas, have all added to the deprivation of states of their resources. The concept of fiscal federalism and devolution of powers are key to achieving a sustainable Nigeria. Other issues for national consideration are; allocation formula, centralization of security at the centre, resource control, the land use decree, the derivation principle, citizenship, electricity, among others.

Recommendations

It is clear that a sustainable restructuring debate in Nigeria must exhaustively involve the practical implementation of fiscal federalism/resource control and devolution of powers to the federating units. Items in the exclusive list and the concurrent list must be altered in favour of the states. The federal government should handle responsibilities related to defense, foreign affairs, currency, telecommunication, immigration, custom duties and excise, citizenship and nationalization, etc; while the states should handle agriculture, education, health and, labour. The states to carry out its responsibilities should manage mineral resources and other natural resources and pay 50% to the federal government.

1. Power should be devolved to the state. The states should be able to take care of is civil police, prisons, and extend its judiciary to Court of Appeal.
2. States should be allowed to establish external relationship with other countries, as well as borrow money to further its development.
3. While majority of Nigerians agree that there is need to restructure the polity, a lot of people do not understand the areas of emphasis. It is therefore important that further sensitization is carried, especially in the Northern part of Nigeria. Restructuring is not synonymous to balkanization of the country. It is also important to allied the fears of elite class and politicians. These groups preferred the status-quo because they are afraid of the unknown.
4. It is important that leaders in Nigeria should have the political will to restructure the polity. The leaders in the past that created these structures cannot be the same to restructure. The country needs a new set of leadership to restore the polity to the structure before the civil war.
5. A lot debates, seminars and conferences have been held in the last nineteen years. What is needed not is to put all the papers and discussions together to restructure the country. Political will is key at this point of the national constitution logjam.

References

Adebayo, S.B. (2017) 'Restructuring Nigeria: A Critical Analysis' *ThisDay Newspaper Lagos.* <https://www.thisdaylive.com/index.php/2017/66/11/restructuring-nigeria-a-critical-analysis> accessed 16-1-2019.

Agiobenebo, T.J. (1999). Assignment, Criteria and the Fiscal Institution: An Excursion into a Theory of Rational Fiscal Federalism; Fiscal Federation and Nigeria Economic Development. *Nigeria Economic Society*, Ibadan.

Akpo, M.O. (2002). *The Challenge of True Federalism and Resource Control in Nigeria*. Abuja: Quadro Impression Ltd.

Anyanwu, C.J. (1999). *Fiscal Relations Among the Various Tiers of Government in Nigeria*. Paper presented at the NES Conference; Fiscal federalism and Nigeria economic development, Ibadan.

Anyanwu, N.D. (1999). *The Makers*: Federal Republic of Nigeria.

Augustine E. and Mordi, R. (2018). Buhari Osinbajo lash out at Restructuring Advocates. *The Nation,* November 13th <thenationonlineenginet/Buhari-Osinbajo-las-out-at-restructuring-advocates> accessed 16th January.

Bryan, A. Garner. The Law Dictionary featuring Black's Law Dictionary free online legal Dictionary <https://thelawdictionary.org/restructuring> accessed 17-1-2019.

Constitution of the Federal Republic of Nigeria, 1999 as amended.

Dare, L.O. (1979): Perspective on Federalism in Akinyemi A.B. and others (eds). *Reading on Federalism*. NIIA, Lagos.

Domo-Spiff, E. (2010). An Examination of the Legal Regimes of Fiscal Federalism in Nigeria. LLM Dissertation, Rivers State University.

Ekpebu Lawrence (2008). A keynote speech delivered at the opening session of the International Conference on the Nigerian State, Oil Industry and the Niger Delta, Niger Delta University, Amasoma.

Godini, G.D. (2017). *Democracy and development in Nigeria: The case of Rivers State*. Lecture delivered on the occasion of Rivers State Golden Jubilee Celebration, Port Harcourt.

Hornby, A.S. Oxford Advanced Learners Dictionary of Current English, 9th edition. London: Oxford University Press.

Ikeme, O. (1999). Constitutional Development in Nigeria (1861-1980) (Ed). A ground work of history.

Kingsley, Moghalu (2018). How toRrestructure Nigeria: Why, what, how and when. The Cable, October 29, <https://www.thecable.ng/how-to-restructure-nigeria-why-what-how-and-when> accessed 17th January 2019.

Mills, J.S. (1901). *Representative Government* (Oxford University Press, London).

Moghalu, K. (2018). 'How to Restructure Nigeria: Why, what, how and when' *The Cable* October 29. <https://www.thecable.ng/how-to-restructure-Nigeria-why-what-how-and-when> accessed 17th January, 2019.

Musgrave, R.A. and P.B. Musgrave (1989). Public Finance in Theory and Practice, International edition. Singapore, McGraw-Hill.

Obaze, H.O. (2018). *Policy Interrogation, Discourse and Debate on restructuring Nigeria: Not when, but how*. <https://www.gamji.com/obaze/obaze15.html> accessed 20th January 2018.

Ogih, M. (2107). Restructuring Nigeria: Meaning, Reasons, Problems and Prospects. *Info Guide Nigeria* October 10.

<https://infoguidenigeria.com/restructuring-Nigeria> Accessed 17th January, 2019.

Olasup, A. & Erhun, M.O. (2008). *Fiscal Federalism in Nigeria Constitutional or Political Solution*. International Conference Proceedings: The Nigerian State, Oil Industry and the Niger Delta. Port Harcourt: Harey Publication.

Olufemi, Mimiko (2018). Fiscal Federalism and Restructuring in Nigeria: Lessons from elsewhere. Nigerian Tribune, September 25th 2018, <https://www.tribuneonlineng.com/165907> accessed 17th January.

Steven, Adebayo (2017). Restructuring Nigeria: A critical analysis. This Day Newspaper Lagos. <https://www.thisdaylive.com/index.php/2017/66/11/Restructuring-nigeria-a-critical-analysis> accessed 16th January.

The Littleton Constitution of 1954.

Wheare, K.C. (1971). Federalism in Government. London: Oxford University Press.

Yilmaz, I. (2012). The Impact of Fiscal Decentralization on Macroeconomic Performance. *Annual Conference on Taxation*, Atlanta, GA.