

Towards Restructuring of the Nigerian Federal System Contribution to a Discussion

By

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Introduction

There is currently an upsurge of passionate demands for “restructuring”, “true federalism” and “actualization of the sovereign state of Biafra”. These demands are intricately intertwined and interconnected, and so vociferous that they are overheating the polity. Sooner than later, these matters have to be addressed squarely but dispassionately. The challenge is on how to address the issue of restructuring the Nigerian federal system without upsetting the apple-chart; that is, how to add value to the structure and systemic efficacy of the federal arrangement, without unleashing instability occasioned by the mobilization of ethnic, regional and religious sentiments and identities.

Federalism is supposed to be “a model of political accommodation and power sharing, as well as a cure for micro-nationalism” (Osaghae 2007, p. 171). Nigerian experience has shown that our federal arrangement has not ensured a stable political accommodation and it has not ensured equitable power and resources sharing. And, instead of curing micro-nationalism, it has fanned the embers of its conflagration.

Some things are clear. The demands for secession cannot be wished away, and Nigeria's unity and continued stay as one indivisible country should not be taken for granted. Statements like: "Nigeria's unity is non-negotiable" or "Nigeria's continued stay as one country is not negotiable" are factually incorrect, wishful thinking and politically abhorrent to those making the demands; these should therefore be avoided, indeed stopped. On the other hand, Nigeria has come such a long way since 1914 that it would be easier to renegotiate the strengthening of the federation through devolution of power, resources and responsibilities, than to go the route of "separation" and secession. Secession and separation from the federal republic of Nigeria has far greater costs and consequences for all concerned (those seeking to separate and those from whom are being separated) than remaining under a restructured federal system. Thus, it is in the enlightened self-interest of Nigeria and all Nigerians to sheath the swords of secession, and wear the garb of political accommodation and appropriate and sincere power and resources sharing. In any case, there is no perfect federal arrangement anywhere in the world. There is nothing in essence, called "true federalism". Federalism is a lived experience, continuously changing and seeking for improvement.

No doubt, Nigeria's need for a "reformed, revitalized, decentralized and democratized federal system" (Suberu and Agbaje, 1998, 344) is long over due. We should therefore begin to soberly interrogate some pertinent questions. For example,

- What should "restructuring" of the Nigerian federation entail?

- How can this “restructuring” best be brought about, and through which mechanisms and processes?
- Is there anything called “true federalism”? If so what is it?
- How should revenues to the federation be collected and shared? Who should collect them and how?

Why Restructuring is Necessary

Three reasons can be adduced as to why some form of restructuring needs to be undertaken, as soon as is possible, in order to improve upon the current nature and operations of the Nigerian federal system; so as to improve the structure and systemic efficacy of the federation:

1. The 1999 Constitution, which was hurriedly put together and enacted by the General Abdulsalam Abubakar military regime, was not a product of appropriate inclusiveness and consultation. As a result, it has many inadequacies and flaws, from which our brand of federal arrangement suffers. Although some amendments have been effected to the constitution, the key issues affecting the federal structure have not been touched; but they cannot be ignored indefinitely.
2. A long period of military rule has resulted in the concentration of power and resources in the central/federal government to the disadvantage of the states, which are the federating units. This has in turn made the contest for political power to occupy federal organs very intense, as capturing federal government is perceived as ensuring control of tremendous power, influence and resources. In an ethno-religiously diverse country, centralization and concentration of power and resources at the

center generates conflict-ridden competition for the control of power at the center. Only a judicious and equitable de-concentration and reallocation of power and resources from the center to the other federating units can de-escalate tension and smoothen hierarchical and horizontal relations in the federation.

3. In reality, the 1999 Constitution has concentrated too much power and resources in the hands of the federal government, as a comparison of the exclusive and residual lists clearly shows; in this regard the uniqueness or exceptional character of the Nigerian federal arrangement is glaring. Powers, which are traditionally the preserve of the federating units (states, regions, provinces) are in Nigeria handed over either exclusively to the federal government, or are shared concurrently by the federal government and the states.

A dispassionate review of the 1999 Constitution would help to resolve many if not all the thorny outstanding issues.

The Thorny Issues

The following are the thorny issues in addressing the challenges of restructuring in Nigeria:

Structure: What should constitute the federating units?

- Federal and States? (Global best practice)
- Federal, States and Local Government Areas? (Current Nigerian)
- Federal and Regions? (Past Nigerian)

- Federal, States and regions? (Contemplated?)
- Federal, Regions, States and LGAs? (Contemplated?)

Historically, preponderantly, there are only two tiers of governance in a federal system: Federal and states or federal and regions, and this arrangement constitutes what can be termed as the global best practice.

Power Sharing: How should power and responsibilities be assigned amongst the federating units?

- Short Exclusive federal List and Long state List,
- Balanced exclusive federal, state residual and concurrent lists
- Short exclusive List, with whatever isn't listed becoming the residual powers of the states

Under military rule, powers of the states were gradually taken over by the federal government, and their fiscal competences were eroded as well. This should be reversed.

Revenue Collection and Sharing: How should revenues be collected and shared amongst federating Units

- Centrally collected Customs and Excise duties?
- Centrally collected income taxes (personal and company)?
- Centrally collected rents / revenues from mineral resources?
- State collected Value - Added Taxes?
- State collected Property Taxes?
- State collected taxes on Cigarettes, etc.?

- Local authority/ municipal collection of markets, motor parks, parks and gardens, Amusement park, cinemas, etc., taxes and levies?
- State collected all revenues with a fraction to the federal? (Resources control)?

The situation currently is as follows:

The Federal Inland revenue Service (FIRS) collects the following centrally:

- Withholding tax
- Petroleum profit tax
- Stamp duties
- Education tax
- National Information Technology Fund levy
- Value Added Taxes collected centrally
- Company income tax
- Company gains tax

All these when collected go directly into the Federation Account.

The Nigeria Customs Service also collects Custom and Excise duties centrally into the Federation Account.

All centrally collected revenues are deposited into the Federation Account, and shared between federal and state governments, in accordance with a formula statutorily recommended by the RMAFC and passed/legislated upon by the National Assembly.

States have Internal Revenue Boards, which primarily collect Pay As You Earn (PAYE) tax from employees, and also assist in the collection of VAT, capital gains and withholding taxes.

The current formula for allocation is as follows:

Federal government share	52.68%
State Governments Share	26.72%
Local Government Share	20.60%

As for VAT, it is:

Federal	15.00%
States	50.00%
Local Governments	35.00%

With regards to petroleum resources revenue in particular, 13% is allocated to "oil producing states", on account of "derivation", while a percentage (3%?) also goes to fund programs and projects of the Niger Delta Development Corporation (NDDC) in the oil producing states of the Niger delta region.

States can generate additional revenues for keeps, e.g. from tenement rates, property taxes and other levies.

Access to federal government provided projects, services, employment, etc.

Severe inequities were introduced and entrenched over time, especially on account of the prebendal politics under civil rule, and

the divide and rule tactics under military rule, especially the mobilization of ethnicity, religion and other primordial interests by those who hold and exercise power at the federal level.

The federal character (equalizing or equal opportunity) principle was introduced to address inequities associated with employment into federal establishments. In practice, many challenges have remained with the implementation of the federal character principle.

Recommendations

The following recommendations covering the structure, power sharing and resources and revenue allocation are offered for further discussion:

Structure

Nigeria should revert to the two-tier system: Federal and States (LGAs subsumed under the States).

It would be unrealistic, if not impossible to revert to a regional structure similar to what was in Nigeria's past history. The pressures that led to the creation of states would not tolerate collapsing or regrouping those states to regions.

Nigeria is probably the only federal system with constitutionally recognized 3 tiers: Federal State and Local Government Areas. This aberration was created under military rule. We should revert to a two tier federal system, with LGAs subsumed under states or regions

Power sharing

Nigeria should have a short federal exclusive list, consisting of Foreign Affairs, National defense and security, Commerce and Currency. We should have a short concurrent list, consisting of Policing, taxation and tertiary education/health. Whatever isn't listed belongs to the residual powers of the states, on which federal government would have only broad regulatory and incentivizing roles.

Specifically, certain powers and responsibilities, which in most stable federations are invested in the federal government, should continue to be retained by the Nigerian federal government. These are in respect of: (1) national security, (2) defense / armed forces, (3) foreign affairs, (4) currency and monetary policies and (5) commerce (banking, inter-state economic relations, etc.). All others, except a few like policing and tertiary education/health, which can be on the concurrent list, can be consigned to the states, with regulatory and incentivizing responsibilities reserved for the federal government.

Henceforth, no creation of additional states should be entertained. And no merger of existing states, except by referendum in which two-thirds majority have voted yes. The question of unviability of some of the existing states can be redressed by the decrease in federal revenues, the increase in the share of federally collected revenues to the states; diversified revenue base for the states, good accountable governance and increased capacity and competence by the states in collecting taxes and levies in their jurisdiction.

Local government, structure, processes and funding, should be the responsibility of each state. A state can have power to create more or merge existing local governments, through a referendum in which two-thirds majority have voted yes. But the local government system must be democratic in form and in content, with constitutional guarantees for this.

Under no circumstances should the merger or reconfiguration of existing states into regions as federating units, akin to what obtained in the past, be contemplated. If that is what some romantically refer to as “true federalism”, it is just that: romantic and idealistic and terribly unrealistic in this age and time. Adding regions to the existing components would be unwieldy, expensive and operationally complex if not disruptive; and merging or converting existing states into regions would be even more problematic operationally and politically, and would essentially revive claims and perceptions of marginalization, discrimination and domination, which creation of states had hoped to redress.

Making revenue generation and distribution more judicious and equitable would solve the current challenges of fiscal federalism in Nigeria and make creation of regions unnecessary.

Revenue collection and sharing

To strengthen the efficacy of the Nigerian federal system, revenue sources need to be diversified; the sharing formula need to be reviewed to devolve more resources to the states; federal tax base should be reduced and that of the states increased; and a more

equitable and judicious formula should be introduced in respect of petroleum and solid mineral resources, which should be in favor of the producing states; and also in favor of the states viz-a-viz the federal government.

Diversification

States should diversify their revenue base, and should pursue other, additional, sources of taxation, especially tenement and property taxation, levies on cigarettes, environmental pollution/degradation, etc., to expand their revenue base. The porous and unaccountable nature of revenue collection at the state and local levels also needs to be sanitized and made more transparent and accountable.

Sharing of federally collected revenues

Some percentage increase to petroleum and other minerals' producing states can be accommodated, up to a maximum of 5%, bringing the total on account of derivation principle to 18%.

The sharing formula between the federal and states governments should be reviewed in favor state governments. States (inclusive of local governments) should be entitled to a maximum of 60% and the federal government no more than 40%. This is taking into account the recommendation that power and responsibilities be devolved from the federal to the state governments.

Equitable access to services by federal establishments (equitable spread) as well as to employment/recruitment by federal establishments (equality of opportunities)

Equitable access to services by federal establishments (spread) as well as to employment/recruitment by federal establishments (access) must be guaranteed by policies and in practice to bring to the barest minimum feelings and perceptions of exclusion, marginalization and discrimination on account of region, religion and/or ethnic and communal identities. The federal character principle needs to be retained and strengthened. Identified challenges in its implementation must be redressed. Other Global good practices in affirmative action and securing equality of opportunity, which drive inclusiveness and address marginalization in diverse societies should be identified and adapted (not wholesale adoption!). Ways and means of making Chapter Two of the Constitution, on Directive Principles of State Policy, justiciable should be explored and entrenched in practice.

Ultimately, we need to realize that mere constitutional provisions do not by themselves ensure a stable and efficacious federal arrangement. These have to be backed by good leadership and good, accountable, responsible and responsible governance, that is guided in practice by the rule of law enshrined in the Constitution. Therefore, the challenging task of nurturing a democratic political culture and electoral integrity has to be pursued vigorously accompanying the processes of restructuring the federation.

Summary and Conclusion

Addressing the imbalances and inequities identifiable in the current Nigerian federal system is long overdue. Better late than never and the time is aptly now. In doing this, we must discard both the wishful thinking that “Nigeria’s unity is non-negotiable” and the idealistic and romantic notions of “ Only on True federalism we stand”. No federal arrange is perfect and accepted by all in it. For countries, which are diverse in complex and intricate ethno-religious mosaics, such as Nigeria, federalism is the only game in town, which can be continuously improved upon.

A careful and dispassionate re-examination of the structure of the Nigerian federation, its history, and its current pattern of power and revenue sharing, suggests the urgent need for realistic, achievable and more meaningful ways of bringing remarkable achievements, which can reduce tensions, minimize conflicts, provide inclusivity and equality of opportunities for all and pave the way for greater national development beneficial to all.

We can do this by removing all the distortions, which have accumulated in our short history, and by bringing and adapting, as value-additions, Global good practices from other relatively more stable federal systems. Learning how countries with more complex diversity than ours, such as India manage to stabilize their federal arrangement, can help us in no small measure to address our own challenges.

By working hard and rationally, scientifically, to remove all the distortions in our federal system we would have a better functioning federation, with only the states as federating units; with local governments subsumed under the states; without creating regions (either in addition to states or by merging states); with substantial devolution of power, responsibilities and resources from the federal government to the states; and with mechanisms of ensuring greater equality of opportunity for all and affirmative action for inclusiveness of the marginalized, minorities and discriminated against groups in the country.

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