

ISSUES IN NIGERIAN FISCAL FEDERALISM; THE RELATIONSHIP BETWEEN THE PRINCIPLE OF DERIVATION AND RESOURCE CONTROL

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Abstract

In most federal countries of the world, intergovernmental relations have been contentious. Their revenue allocations have equally been reportedly contentious. The distribution of resources among the various levels of government has never been easy and smooth, hence the contention and Nigeria is no exception (Okeke, 2004). The determination of what constitutes the federal revenue and how it should be shared among the component federating units in Nigeria lie at the center of most, if not all national conflicts. This is why scholars and researchers of National Political Issues have upheld that Revenue allocation in Nigeria has generated a lot of controversy in recent times. The issue had been the allocation between various tiers of government (vertical allocation) and between states (horizontal allocation) but recently, another dimension was introduced to the vertical allocation issues- revenue allocation pattern between the federal government and the Oil-rich states, local government and communities. This third dimension is what made “Issues in Nigerian Fiscal Federalism” unique because the criteria used so far have not enjoyed acceptability and therefore, it has been problematic. From the inception of the entity called Nigeria following the 1914 amalgamation, there has been schemes, schedules, modes, methods and patterns of relationship among the federating units in terms of administration (Intergovernmental relations) and finance (Intergovernmental fiscal relations), in which case, several principles have been expounded and adopted once in a while singularly or collectively such as the principle of Derivation, Need, Population, Even Development, Equality of State, National Interest, Independent Revenues, continuity of Government Services, Financial comparability, Fiscal Efficiency, Tax Efforts, Minimum National Standards, Equality of Access to development Opportunity, out of which the principle of Derivation has been variously advocated for and applied to equalize for the third dimensional sharing pattern referred to above but most recently, the derivation principle no longer seem to be favoured by these oil-rich states and they call for “resource control”. This call for resource control, like the principle of derivation has generated much heat in the Nigerian political scene of recent to the extent that a political solution was sought for where some Governors entered into agreement with the then president to ensure peace in Niger-delta region. The current president of the Federal Republic of Nigeria also created a Niger Delta Ministry to take care of the yearnings and aspiration of the people of Niger-Delta. But the question this paper wishes to address is, has the situation abated? If not, why? And what is the solution? This paper therefore examines the key issues in the Nigerian fiscal federalism with emphasis on the relationship between the derivation principle and resource

control, and how a prudent application of derivation principle will quell the issues inherent in Nigerian fiscal federalism generated by “resource control”

Keywords: Federalism, Nigerian Fiscal Federalism, Derivation Principle and Resource Control, Revenue Allocation

INTRODUCTION

In every political system, there exist various levels of governmental powers and responsibilities. The nature and number of these levels of governmental powers and responsibilities tend to determine the pattern of relationship among them. This relationship is referred to as intergovernmental relations. It is the responses that have been developed to facilitate cooperative policy-making among divided governments within a federal system. Intergovernmental relations are supposed to play a “bridge-building” role to bring a degree of coordination and cooperation to divided power (Okafor, in Onuoha & Nwanegbo 2007: 16) and it is upon this role, the ground norm of most federating states exists. The concept of intergovernmental relations is most times used in reference to federal system of government or interactions occurring between (or among) governmental units of all types and levels within, for instance, the United States Federal System. This makes intergovernmental relations as practically existing within federal system alone (Obi, in Onuoha & Nwanegbo 2007:135). Federal system of government heralds federalism. Federalism, therefore, implies the existence in one country of more than one level of government each with different expenditure responsibilities and taxing powers. It is essentially about government structure in the multilevel sense, rather than within a particular level of government, in the performance of government functions. There is a general belief that the concept of intergovernmental relations is often associated with federalism because the study of federalism, at its empirical level heavily stress the study of intergovernmental relations (Bamidele, 1980:207).

In the Nigerian context, this consists of the federal government, 36 states, federal Capital Territory (FCT), 774 Local Governments (Ekpo, 2004) and six development units in the Federal Capital Territory. In all federal systems, there is usually “resource sharing” among the three levels of government- the federal, states and local government called intergovernmental fiscal relations. Intergovernmental fiscal relations imply fiscal federalism. Fiscal federalism is essentially about the allocation of government spending and resources to the various tiers of government. The evolution of Nigerian fiscal federalism derives from economic, political/constitutional, social and cultural developments which have influenced the nature and character of intergovernmental relations.

Fundamentally, the Nigerian Fiscal Federalism has been bedeviled to the extent that it is 100% scholarly correct to assert that one of the most protracted and controversial debate in Nigerian economy is the way government revenue is shared among the component tiers of government in the country (Uche and Uche, 2004). This debate has its foundation in the chequered history and evolution of Nigerian federalism. The amalgamation story of what constitute the present-day Nigeria started in 1861 when the territory of Lagos was compromised and formally ceded to the British Government and it became the Lagos colony. In 1885, the British government proclaimed the oil Rivers Protectorate over some parts of present day Southern Nigeria (Nwokedi, 2006: 7).

In Nigeria, decision as to who gets what share of the federally generated revenue has been very problematic, especially since the discovery of oil and its exploitation and exploration.

However, the attempts to tackle this situation have engaged several commissions, committees, degrees, Supreme Court rulings and constitutional amendment. These processes tried to device a proper means of sharing the centrally generated revenue. These efforts have come in contact with many principles like the principle of Derivation, Need, Population, Even Development, Equality of State, National Interest, Independent Revenues, continuity of Government Services, Financial comparability, Fiscal Efficiency, Tax Efforts, Minimum National Standards, Equality of Access to development Opportunity (Ekpo 2004 & Ofuebe, 2005: 180), out of which the principle of Derivation has been variously advocated for and generally applied in the history of Nigerian fiscal federalism. Unfortunately, this principle has evoked more rivalry and bitterness than the problem it sought to resolve. The principle of Derivation requires that a certain percentage of all revenues accruing to a particular state, irrespective of the fiscal jurisdiction involved or machinery for the collection should be calculated and returned to these states. The 1999 constitution of Nigeria provided for not less than 13 per cent. Unfortunately, the principle of derivation became de-emphasized and negated in the revenue sharing formulae, at a time when the oil producing states which have suffered deprivation in the past, were to have the opportunity to enjoy special advantages accruing from oil from their land and, this led to the unquelling thirst and demand for “resource control” by the oil producing states. Therefore, the application of the derivation principle and the resource control became the contending “issues in Nigerian fiscal federalism”. In view of the above antecedence, the main thrust of this paper is to examine the Nigerian Fiscal Federalism and find out what went wrong with the application of derivation principle, evaluate the relationship between the resource control and derivation principle and proffer a lasting solution to the contentious issues inherent in the Nigerian fiscal federalism especially those caused by the call for resource control.

In doing this, this paper was structured into seven dimensional parts. The first part is the introduction, followed by the conceptualization of basic concepts in the paper such as the concept of federalism and fiscal federalism in part two. Part three is on the Nigerian fiscal federalism. While part four discusses the principle of derivation, part five talked about resource control, leaving part six to dwell on the relationship between the derivation principle and resource control and the last part (part seven) recommends plausible solutions and concludes the paper.

FEDERALISM

Federalism is a system of government in which power is shared between the central, or federal government and the states. It is a form of government in which power is divided between the federal or national government and the states. Federalism also referred to as federal government, a national or international political system in which two levels of government control the same territory and citizens. The word federal comes from the Latin term *fidere*, meaning “to trust.” Countries with federal political systems have both a central government and governments based in smaller political units, usually called states, provinces, or territories. These smaller political units surrender some of their political power to the central government, relying on it to act for the common good. In a federal system, laws are made both by state, provincial, or territorial governments and by a central government. In the United States, for example, people who live in the state of Ohio must obey the laws made by the Ohio legislature and the Congress of the United States. In Canada, residents of the province of Québec follow the laws made by Québec’s legislature and those made by the Canadian parliament. In addition to the United States

and Canada, countries that are considered federalist include Australia, Brazil, Germany, India, Malaysia, Mexico, Nigeria, and Switzerland.

Theoretically, the concept of federalism, according to Mogi (1931 cited in Ifesinachi, 2007) can be said to have originated from ideas on intergovernmental relations which dates back to the Greek civilization, when efforts were made to describe the legal relationships between the leagues and the city states. Jean Bodin was noted as the first advocate of modern federalism followed by Otto Cosmanus, Hugo Grotius and others. These writer view federalism as a voluntary form of political union, either temporary or permanent, of independent authorities, for special common purposes such as defense against foreign powers for the interest of trade and communication or for other reasons. It was in 1787 that the American constitution introduced a new concept of federalism, which emphasized contacts at the governmental levels between participating units and among the citizens of the different units, usually found in a federal system of government.

Operationally, Okoli, (1999) sees a federal system of government as a form of government in which powers devolves around two or three levels of authority hence its practice is a product of the desire of a certain group of people to maintain a modicum of national identity and unity insipient of their differences. Indeed, federalism promotes cooperation and unity in diversity. Of sensitive importance to the survival of any federal arrangement, according to Wheare (1965) is the need to ensure that the necessary financial and functional lee ways are extended to each level of relationship to ensure time federalism.

Federal political systems divide power and resources between central and regional governments. The balance of power between the two levels of government varies from country to country, but most federal systems grant substantial autonomy to state or provincial governments. Central governments decide issues that concern the whole country, such as organizing an army, building major roads, and making treaties with other countries. Federalism varies in practice, however, and in some countries with federal systems the central government plays a large role in community planning, schools, and other local issues.

The United States began as a confederation. A weak central government ruled the country from 1783 to 1789 under the Articles of Confederation. Each state had an equal voice in Congress, but Congress could not collect taxes to operate the government. The confederation of states had no chief executive and no central body with enough power to make the states abide by the Articles of Confederation. Some states refused to follow the terms of the 1783 Treaty of Paris that ended the American Revolution, even though the Articles of Confederation gave Congress the right to make treaties for all the states. Trade disputes with Great Britain and other countries paralyzed the economy, but the Articles of Confederation left Congress powerless to take charge of international trade. Some states imposed heavy taxes on goods from neighboring states, further stifling commerce.

The ensuing economic crisis threatened to destroy the young country, but no political authority had power to assume leadership. "The wheels of government are clogged," future president George Washington remarked in 1785. Washington and other statesmen realized that the country could only survive if the central government had more power, but they also wanted to avoid trampling the rights of the states. In 1787 political leaders held the Constitutional Convention to confront the crisis, and this historic meeting produced the principles of modern federalism (Microsoft Encarta, 2009).

Federalism is therefore a political system in which several states or regions defer some powers, e.g. in foreign affairs, to a central government while retaining a limited measure of self-

government. Generally therefore, federalism is essentially about government structure in multilevel sense, which begets fiscal federalism (Taiwo, 1999).

Federalism, as practiced in Nigeria today, is a far cry from what true federalism represents. As the nation awakens to the realities of its ethnic, religious, political diversities and corporate existence, the structure of her federalistic claims has to be revisited and refocused.

True federalism in the real sense of the word promotes accelerated economic development, it unifies and binds people together, it triggers intellectual dialogue and provokes a healthy rivalry in revenue generation. These laudable goals are only achieved where the federating units are allowed free access in decision making and inputs into governance. According to Denisa () Federalism, as practised in Nigeria today, is likened to a lion chasing an antelope and squeezing out life from it (the lion represent the Federal Government while the antelope represents the states government). The federal structure of Nigeria today is a gross anomaly. This present structure has positioned itself as an octopus firmly gripping the federating units with its poisonous clutch and constantly dictating its destiny.

Nigeria, at independence, embraced regionalistic federalism. The country was grouped into regions. Each region operated independently without undue interference and hindrance from the top. This system provided dynamism in economic development. The reason being that they mobilised their human and material resources in revenue generation. Each region identified its area of strength and developed a marshal plan of human capacity building which resulted in a high pool of intellectual resource contributors and a highly skilled national strength. The region, under our founding fathers, experienced massive infra structural facelift, excellent facilities and an enviable macro and micro-economic policies.

They generated their revenue independently which was ploughed back in developing their regional economies. This system gave everybody a sense of duty and belonging. There were willingness in contributing to their regional economies. Nigeria witnessed growth in every facet - this period marked true federalism in display. What obtains today is a mockery of the old order. Why must we claim to be a federalistic country when virtually all rules and decisions are being dictated from the top? Why was the old order of regional governance and unfettered federalism abandoned? This could be largely attributed to the discovery of crude oil and the military incursion into governance.

FISCAL FEDERALISM

Evidently, finance has emerged as the most critical policy issue in intergovernmental relations in every federal administrative system since the Second World War. A dominant theme in intergovernmental relations studies, noted Ademolekun (1983) is the different attempts made to administer federal finance to the satisfaction of each level of government. In this manner, Danjuma (1994) opined that the existence of a federal system with its accompanying political units necessitates a revenue sharing arrangement to enable its units to carry its constitutional assigned responsibilities. Corroborating this stand, Onuoha (2007) stated that in a federation, the logic underlining the allocation of tax powers (revenue resources) does not always tally with the logic underlining the assignment of constitutional responsibilities and that there is always a gap between the revenue obligation and revenue resources to the levels of government. Revenue allocation therefore has been evolved as a mechanism for dealing with this imbalance or gab between expenditure obligation and revenue sources. Nwankwo (2007) posits that intergovernmental fiscal relations can be conceptualized as the system by which revenue is collected and shared by units of government, including administrative agencies.

Within a territory, Musgrave (1959) and Oats (1972) referred intergovernmental fiscal relations to as fiscal federalism. Daily Independent (2005) had asserted that fiscal federalism concerns the division of public sector functions and finances among different tiers of government including transfers or grants, most often from the centre to any of the component units (Daily Independence, 2005).

In practice however, there exist some degree of decentralization is what is discernable in a federal states hence he (Ekpo) averred that among the different levels of government, fiscal arrangement must be worked out to ensure fiscal balance in the context of macro-economic stability, and this fiscal arrangement is referred to, in a federal structure as fiscal federalism or intergovernmental fiscal relations. Sometimes both are interchangeably used. The institutional arrangement adopted by a federal state for the purpose of intergovernmental relations finds corroboration in the work of Nwankwo (2007) who asserts that the concept of administrative intergovernmental relations which focuses on the relationship between officials and structures that exist for administrative purposes, suggest that applicability of the concept of intergovernmental fiscal relations relatively in all cases hence he had conceptualized intergovernmental fiscal relations as the system by which revenue is collected and shared among the units and that a federal constitution, as a matter of necessity, gives rise to fiscal federalism (Wheare, 1960 cited in Okafor 2007), a concept that is often used to describe the fiscal relationship between the tiers of government in federal state. Fiscal federalism, according to Uche and Uche (2004) is essentially about the allocation of government responsibilities, as well as the sharing of revenue resources among tiers of government.

In determining how these resources are to be shared among the tiers of government. Ofuebe (2005) is of the opinion that these revenues are to be divided according to fixed principles. These principles' importance has been heightened by its inclusion in section 162(2) of the Constitution of the Federal Republic of Nigeria as a major deciding factor. This is because Nigerian fiscal federalism has been problematic. Revenue allocation has generated controversy in recent year and at issue has been the allocation between various tiers of government (vertical allocation) and between resource-rich and resource-poor regions (horizontal allocation). More recently, another dimension has been introduced to the vertical issues, namely the allocation between the resource-rich regions, local government and communities. Debates about the distribution of national resources within federal systems are not peculiar to Nigeria. However, the Nigerian case is unique because the criteria used so far have not enjoyed acceptability. Every government in Nigeria has tried to address the problem. One general observation is that changes in the formula are often associated with the type of government.

In Nigeria, according to Elaigwu (2007), fiscal federalism preceded its \gradual evolution into a colonial federal state in 1954. Issues of distribution of scare but allocatable resources had often beclouded the desires of Nigerians to generate these resources that were expected to be shared. Through its history, it has been evident that Nigerians have always been sensitive to the fiscal dimensions of its federation. According to him, in the past one year, Nigeria's media have been replete with the debate over the nature of resource generation, distribution, and challenges of equalization in the federation. At the national political reform conference in 2005, delegates from some states of the federation staged a walk-out because of the nature resource distribution. All these was in recognition of fiscal federalism as cardinal to the stability and progress of the federation.

THE NIGERIAN FISCAL FEDERALISM

The issue of fiscal federalism has engaged various commissions and committees since the colonial days. Yet even today, this issue has continued to be in the front burner of National discourse. The demand for resource control clearly demonstrates that this is still an unsettled matter. Yet it is an issue we must find a way to resolve if Nigeria is to continue as a federation (Ozo-Ezon, 2007) as it is an established fact that the manner of revenue generation and distribution in a federal structure is critical to the sustenance of such relationship (Ezeh, in Onuoha & Nwanegbo 2007:76). Fiscal federalism therefore refers to the fiscal arrangement among the different tiers of government in a federal structure (Ekpo, 2004). Indeed, Nigeria's fiscal federalism has emanated from geographical, historical, political, economical, cultural as well as social factors. The basic point has remained that in all these, fiscal arrangement that can guarantee peaceful coexistence had remained a controversial one thus resulting to the demand for resource control by the oil rich states in the country.

The controversy inherent in Nigeria's fiscal federalism, according to Uche and Uche (2004) dates back to the origin of Nigeria hence one of the main reasons for the amalgamation of Northern and Southern Nigeria in 1914 by the colonial government was to enable the colonial government reduce its subsidy on the colony of Northern Nigeria by using up the surpluses from Southern Nigeria, irrespective of the fact that before the 1914 amalgamation of Nigeria, the principle of derivation was in vogue. Each of the regions collects revenues of its internal resources mainly from agricultural, cash or export crops, taxation on import and export and excise duties (Nwokedi, 2005:24).

However, the history of fiscal federalism in Nigeria became glaring from 1940s, such that between 1948 and today, Nine commissions, six military decrees, one act of legislature and two supreme court judgments have been resorted to in defining and modifying fiscal interrelationships among the component parts of the federation. (Egwaikhede and Isumonah, 2001). That the federal government has always taken the "lion share" of the vertical allocation to itself and delegating more constitutional functions to the states is not an over exaggeration because statistically, the 1981 Act which was signed into law and subsequently used in allocating revenues in 1982 and the remainder of the second Republic gave 55% to the federal government and leaving the state (36) and (589) local government with 35% and 10% respectively. In 1999, the president Obasanjo amended the formulae to give the federal government 56% and the state and the local government sharing 44%. Political observers believe that the lion's share of the national revenue given to the federal government runs against the grains of the current global trend in federalism...Under this arrangements, state governments cannot be regarded as coordinate with the central government, and against this background, there is a widespread clamour for the return to "true federalism" thwarted in 1967 with the creation of 12 states. In addition, this high percentage of Federal Government's share of the revenue, is not only the main source of injustice but also the principle cause of corruption, alleviation, marginalization, instability and reckless agitation for restructuring in the country (Chibuike 2006), and this high concentration of federal wealth on the federal government has culminated into the elimination of the only true principle of federal fiscal operation- principle of derivation, because it takes much away from the people from whose land, these resources are derived from.

Below is a showcase of the history of the Nigeria's fiscal federalism especially as it reveals the role of the principle of derivation. Consequently and explicitly, the first phase of the development of fiscal federalism in Nigeria occurred during the 1948 to 1952 period. This phase was marked by centralized financial arrangement in which the excesses in the budget of the

central government were allocated to regional governments on the principle of derivation. The expenditure needs of the central government thus took precedence. In the second phase (1952-54) autonomous revenue and tax jurisdiction for the regional government was introduced in addition to the operation of the principle of derivation for the sharing of the federal collected revenue. The basic element of the second phase was carried over to the third phase (1954-59). A major distinguishing factor of this phase was the emphasis on the derivation principle in the sharing of the federally collected revenue. This pleased the North and West giving the boom in their export commodities: cotton and groundnut in the North and cocoa in the West. The Eastern Region, whose main export crop: palm oil was facing difficult time in the global market, was unhappy with the application. In general, this was a period of state centered fiscal federalism. It has remained the reference point by present day proponents of either higher emphasis of derivation or resource control, especially minorities of the oil producing area. Some advocates of resource control actually equate it with 100% derivation. The fourth phase (1960-66) which remains the main pillars of fiscal federalism to date was a product of independent politics. This phase sought to reduce the earlier emphasis on regional financial independence base on the principle of derivation. It was argued that the financial stability of the federal government was necessary for the stability of the regions. Following from this, the 1960 and 1963 constitution provided for 50% derivation in respect of revenue from all mineral. It was in this phase that the Distributable Pool Account (the forerunner of today's federation account) was instituted. Specified tax proceeds collected by the federal government was paid into this account and then distributed to the regions based on the following criteria: Continuity in government services. Minimum responsibilities of each government Need based on population size of the region, The balanced development of the federation

The fifth phase, beginning from 1966 has been characterized by increasing centralization as the states have become increasingly more dependent on the centre. This period has coincided largely with the military stronghold on Nigeria politics. The centrist command structure of the military was brought to bear on intergovernmental fiscal relationship. A number of historical occurrence and events were exploited to promote the centrist preference of military rulers. Of these, the civil war and state creation were the most important. The creation of states from the regions and continuous fragmentation of states from the regions became instruments for promoting a concentration of fiscal authority at the center. In addition to this, various decrees were promulgated, expropriating tax authority and jurisdiction from the state. The centrist philosophy found its way into the 1999 constitution of the Federal Republic of Nigeria handed down by the military. This is the exegesis of the section 162(2) of the 1999 Constitution. Even under democracy, fiscal centralization has been too attractive for democratically elected governments at the centre to resist. Calls by lower tiers of government for more decentralization of fiscal arrangement have continued to fall on deaf ears. Fiscal Mobilization Commissions appointed by the central government and the National Assemblies have continued to formulate revenue allocation formulas which maintained fiscal centralism (Egwaikhide and Isumonah in Ozo-Eson 2005), without much consideration for the derivation principle.

THE PRINCIPLE OF DERIVATION

The principle of derivation, according to Nwokedi (2007:8-16) is the most common concept advocated and generally applied in the history of Revenue Allocation in the Nigerian federation but equally, perhaps no principle has evoked more rivalry and bitterness than this principle, especially during the period, from the creation of regions up to 1951 and between 1954

and 1959. Ofuebe (2005) is of the opinion that this principle implies that the state from which the bulk of the revenue is derived is entitled to get an extra share beyond what every other state receives. Nwokedi (2007) opined that the principle of derivation requires that all revenues which accrue from or are attributable to a particular state should be allocated in part or in full to such a state, irrespective of the fiscal jurisdiction involved or the machinery for the collection. The principle is closely related to the benefit principle of taxation. Its main attraction is that it ensures that a state of origin of any particular revenue would receive more than any other state from the revenue accruing from within its geographical boundary or area of jurisdiction. This is what Obi (Obi, in Onuoha & Nwanegbo 2007:135) called taking care of the goose that lays the golden egg and Metz (1992) refers to it as aberration of the practice of the national cake sharing towards the thought of National cake baking.

Evolutionarily, Nwokedi (2005:28) opined that at the time of amalgamation of the two regions, the principle of derivation was in vogue. Each of the regions collected revenue of its internal resources mainly from agricultural cash or export crops, taxable import and excise duties. Edevbie (2000) pointed out that the principle of derivation has always been applied in various revenue allocation formulae with the regional governments (later states) receiving the proceeds and utilizing it for the development of the regions or states. Indeed, until March 2000, the states were receiving revenue allocation based on the derivation principle. The only difference was that it was only one percent. He went further to state that with the partial implementation of the 13% derivation principle, the state government has received all sorts of calls to the effect that the revenue should be transferred to the oil producing local areas, or that it should be spent to develop only the oil producing local government areas. The attitudes of the state government have been to see such calls as suggestions on how best to utilize the revenue for the upliftment of the lots of the people. This is what the state government is determined to do and in strict adherence to the constitution and to the laws of the federation.

Ofuebe (200:180-1) maintained that the importance placed on the principle of derivation virtually excludes the majority of the states from benefiting from such productive sources of federal revenues as mining rents, royalties and petroleum profit tax, which the political Bureau (MAMSER, 1987:171-2) supportively averred that these states deserve the preferential treatment hence it should be seen like a compensation from the government to them because;

In view of the ecological disasters that have often befallen these areas whose sources of livelihood, especially agriculture and fishing, have been wiped out by pollution resulting from oil exploitation. Attention has been drawn to the very deplorable conditions of all the oil producing communities throughout the country.

Unfortunately, the principle of derivation began to be de-emphasized in the revenue sharing formulae, at a time when the oil-producing states which suffer deprivations in the past, were to have the opportunity to enjoy special advantages accruing from oil from their areas which has now become the fastest growing sources of revenue. The right of the states government, according to Edevbie (2000) to receive statutory allocation arising from the application of the principle of derivation is derived from several legislations dating as far back as 1960. An example is section 2, sub-section 2 and 3 of the Allocation of the Revenue (Federation Account etc) Act, 1982 as subsequently amended and the combined effects of section 162(2) and section 313 of the 1999 constitution of the Federal Republic of Nigeria. Section 2(2) of the Allocation of

Revenue (Federation Account, etc) Act 1982 is very clear and unambiguous in the provision that the 3.5% specified in the subsection 1 above shall be sub-divided and allocated as follows: 2% shall be paid directly to the states concerned in direct proportion to the value of mineral extracted from the territory of the states and the balance of 1.5% shall be paid by the government of the federation into a fund to be administered by the federal government for the development of the mineral producing areas in Nigeria, which fund should be managed in accordance with such directions as may be issued in that behalf from time to time by the president having due regard to the value of minerals extracted from and around the particular areas.

These rights, according to Dina Committee Report (1969), culminates to the fact that the preference of the Philipson for the derivation principle was based on his believe that there was need to inculcate in each region, a sense of “financial responsibility” so that they will all learn to “cut their coat according to their cloth”. Also, Littleton and Philips (1980) asserted;

The principle of derivation has dominated revenue sharing in this country since [the 1940s]...when we began moving from a unitary to a federal system of government. Thus, the Phillipson commission of 1946 applied effectively on the principle of derivation. Hicks-Philipson commission of 1951 proposed derivation principle as one of the three principles while Chick commission of 1953 adopted derivation only, but for the first time extended it to cover 100% of mining rents and royalties to the regions of origin. Mining rents and royalties since, have remained with us in varying degrees, as a derivation principle of Revenue allocation...this principle, be it in the glorious days of cocoa in the West and Groundnut pyramids in the north or the Oil boom seventies in the Rivers and Bendel states, have always aroused envy not because it is illogical or unjust to give more to him that contribute more, but simply and solely because it gives more money to these states. The situation has been aggravated by the sudden dominance of the economy by the oil sector, resulting in much larger sums of money accruing from rents and royalties, being shared essentially between two minority states. After the reducing the factor from 100% to a mere 20% (Decree No 6 of 1975) and the residue was still sizeable, we had to look for reasons why it should not exist at all.

In the same manner, Balogun (2002, cited in Emeh, 2010:52) asserts that section 162(2) of the 1999 constitution states that

the president, upon the receipt of advice from the Revenue mobilization Allocation and Fiscal Commission, shall table before the National Assembly proposal for revenue allocation from the federation Account, and in determining the formulae, the National Assembly shall take into account, the allocation principles especially, those of Population, equality of states, internal revenue generation, landmass, terrain as well as population density: provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

The unfaithfulness in the application of the principle of derivation and the meagerness of the 13 percent, recommended by the 1999 constitution coupled with its concomitant onshore-offshore dichotomy, alongside their claim on the former Republican constitutional 50% derivation recommendation and the apparent subjugation and sidelining of the derivation principle, led the oil producing states to the clamour and demand for “Resource Control”. But the concept of resource control is fuzzy and ambiguous such that the understanding of the main contention of this paper may be displaced without a clear conceptualization of the concept of “Resource Control” and subsequently, identify the relationship between the principle of derivation and resource control.

RESOURCE CONTROL.

According to Nwokedi, cited in Onah and Ifedayo (2010), resource control connotes the access of communities and state governments to natural resources located within their boundaries and the freedom to develop and utilize these resources without interference from the federal government. Ofeimum (2005) captured the concept of resource control thus: this principle is that every federating unit must be empowered to be self-governing in this sense. It is the business of the rest of the country to help them exercise their right without let or hindrance. Seen in the above light, resource control amounts to an expression of self determination by the zone and it places a collaborative duty on other parts of the country to assist the zone realize this objective. This, according to Onah and Ifedayo (2010) is more of an emotional view or expression of the concept.

Agu (2004) conceptualized it as a question thus “...how can these states be compensated?...how would the revenue accruing from mineral resources be redistributed to ensure that the contributing states or communities benefit while an agreed sum is paid to the federal government”. Onah and Ifedayo (op.cit) observed that this conceptualization attempts to locate resource control within a “true” fiscal federal practice. Douglas (2005) sees it as “Actual control of resources by the people who live in the communities with these resources for the support of life...Resource Control is about survival”. This according to Onah and Ifedayo is an average Niger-delta view of resource control. It is seen as a magic wand or pill that solves all the problems of the zone. It totally ignores the management question on the elite, which is tantamount to postponing the core issue at stake.

Deriving from the above definitions of resource control given above, Nigeria resource control agitation amounts to verbal war of liberation which can be said to be multi-dimensional as “between the oil minorities and the federal and the federal state... and between oil producing and non oil producing state” (Obi, 2005). Implied in the above is the fact that center should relate with the oil bearing areas (where over 80% of the federal revenue are generated) based on equity, justice and transparency among several virtues, and against the backdrop of negative externalities that oil prospecting, exploration and production generate. Noting also that oil is a depleting asset. In related development, Ikporukpo (2002), asserted that “...a common thread linking all the protests is the feeling of the people that in spite of their oil resources and the governmental deterioration consequent on the resource exploitation, the region remains underdeveloped and neglected with the non-oil producing areas such as Abuja deriving most of its benefits. Ikhariale (2003) posited that the questions of resource control and genuine federalism are treated with levity and that percentage of compensation to the zone for redressing lingering injustices is being insulted. This is why Orji & Jaja, () undertook a thorough research in other to understand the underpinnings of the issue of derivation principle and resource control

in which they averred that the resource control question has taken a Centre stage in the economy of our nation-state, Nigeria. Allied issues like revenue generation and revenue allocation cum fiscal policies vis-à-vis a derivation formula are inextricably inter-twined. Our subject matter deals with the mechanisms for the equitable distribution of the proceeds of internally generated revenue. Nigeria is a nation endowed with viable mineral resources in virtually all the states. In Abuja (FCT) we have marble and tantalite; Abia State has deposits of gold, salt, limestone, lead/zinc, oil and gas; Adamawa State – kaolin, bentonite, gypsum magnesite, barites, bauxite; Akwa Ibom State – clay, limestone, lead/zinc, uranium (traces) salt, lignite (traces), oil and gas, Anambra State - lead/zinc, clay, limestone, iron-ore, lignite (partially investigated), salt glass-sand, phosphate, gypsum; Bauchi State – amethyst (violet), gypsum, lead/zinc, uranium (partially investigated); Bayelsa State – clay, gypsum, highlite and manganese (partially investigated), lead/zinc (traces), oil and gas; Benue State – lead/zinc, limestone, iron-ore, coal, clay, marble, bauxite, salt, barites (traces), gemstone, gypsum, oil and gas; Borno State – diatomite, clay, limestone, oil and gas (partially investigated) gypsum, Kaolin, bentonite; Cross Rivers State - limestone, uranium, manganese, lignite, lead/zinc, salt, oil and gas; Delta State-marble, glass-sand, clay, gypsum, lignite, iron-ore kaolin, oil and gas; Ebonyi State –lead/zinc, gold, salt; Edo State – marble, clay, limestone, iron-ore, gypsum, glass-sand, gold, dolomite, phosphate, bitumen, oil and gas; Ekiti State – kaoline, feldspar, taticum, granite, syenites; Enugu State – coal, limestone, lead/zinc; Gombe State – gemstone, gypsum; Imo State – lead/zinc, limestone, lignite, phosphate, marcasite, gypsum, salt, oil and gas; Jigawa State - barities; Kaduna State-sapphire, kaolin, gold, clay, serpentinite, asbestos, amethyst, kyanite, graphite and sillimanite (partially investigated), mica (traces), aqua marine, ruby, rock crystal, topaz, flouspar, tourmaline, gem stone, tantalite; Kano- pyrochlore, cassiterite, copper, glass-sand, gemstone, lead/zinc, tantalite; Kano – pyrochlore, cassiterites, copper, glass-sand, gemstone, lead/zinc, tantalite; Kano State-Pyrochlore, cassiterite, copper, glass-sand, lead/zinc, tantalite; Katsina State- kaolin, marble, salt, Kebbi State –tantalite, limestone, bitumen; Kwara State-gold marble, iron-ore, cassiterite, columbite feldspar and mica (traces); Lagos State – glass-sand, clay, bitumen, sand tar, oil and gas; Nasarawa- beryl (omerald), aquamarine and bellodor, dolomite/marble, sapphire, tourmaline, quartz, amethyst (garnet) topaz, zircon, tantalite, cassiterite, columbite, limonite, galena, iron-ore, baryles, feldspar, limestone, mica cooking coal, tale, clay, salt, chalcopyrite; Niger State – gold, talc, lead/Zinc, iron-ore; Ogun State – phosphate, clay feldspar (traces); Ondo State- bitumen kaolin, gemstone, gypsum, feldspar, granite, clay, glass-sand, dimension stones, coal, bauxite, oil and gas; Osun State- gold, talc, tourmaline, columbite, granite; Oyo State – kaolin, marble, clay, silimanite, talc, gold, cassiterite, aquamarine, dolomite, gem stone, tantalite; Plateau State-emerald, tin, marble, granite, tantalite/columbite, lead/zinc, barites, iron-ore, kaoline, cassiterite, phrochlore, clay, coal, wolram, salt, bismuth, fluoride, molybdenite, gem stone, bauxite, Rivers State-glass-sand, clay, marble, lignite (trances), oil and gas; Sokoto State- kaoline, gold, limestone, phosphate, gypsum, silica-sand, clay, laterite, potash, flaks, granite, salt; Taraba State – kaoline, lead/zinc; Yobe State- diatomite, soda ash (partially investigated) and Zamfara State-gold (Federal Ministry of Solid Minerals. Abuja cited in Tell, July 11, 2005).

Apart from these mineral resources, the various Regions during the colonial era and shortly after were known for producing cash –crops that were in high demand. For example, the North concentrated mainly on the production and export of groundnuts while the West embarked on cocoa with the East majoring on palm products. The essence of x-raying the preponderance of natural resources is to unveil the economic potentialities of the Nigerian state vis-avis the

argument for resource control and the conflicts associated with it. This is because the political economy of resource control has assumed the status of an albatross vis-à-vis the socio-economic development and political stability of nascent democracy in Nigeria.

THE RELATIONSHIP BETWEEN THE PRINCIPLE OF DERIVATION AND RESOURCE CONTROL.

One of the contemporary issues in the political economy of oil in Nigeria is the ownership question or what has come to be termed 'resource control'. In recent times, this issue has assumed crisis proportion as the oil producing communities have fiercely asserted their claims to ownership following decades of uninterrupted process of economic marginalization and political repression (Anam-Ndu, 2007). The issue of resource control was first muted in 1953 at the London Conference constitutional. Chicks' commission was appointed to work out a suitable fiscal revenue sharing arrangement between the central and regional government. It recommended that Regions should collect and retain revenues from personal income tax, License and service fees, interest on loans and earnings on surplus funds invested, revenue from regional department, etc. The Raisman commission of 1958 recommended that derivation principle be ensured so that 50 per cent allocation to the region of origin of the mineral resources be guaranteed. Even though some minor resentments were in the offing, military interventions appeared to have exacerbated such resentments because of the abolishment of the derivation principle. It was the Aboyade Technical Committee on Revenue Allocation of 1977 recommended complete abrogation of derivation principle. The military endorsed the recommendation and consequently deprived the states of the right to enjoy the benefit of their endowed mineral resources (Okeke, 2004: 3). The agitation culminated into the demand for resources control. Therefore, the abolition of the Derivation Principle to the agitation for resource control. What then is Resource Control?

Resource Control can only be fully appreciated and understood under Federalism. Federalism is a constitutional system under which the people of any particular territory are politically united in subjection to the control, not of one government supreme over them in all matters and for all purposes, but a number of governments each supreme in a definite sphere of its own, free completely from the possibilities of encroachment from the rest". This is cardinal and gives rise to the assertion that, in a true federal arrangement, no level of government is subordinate to the other, but rather all tiers of government are co-ordinate, one with another. Financial subordination, which can only exist in the absence of Resource Control, makes a mockery of Federalism no matter how carefully the legal forms may be preserved. It stands to reason therefore that each unit must have the power to harness its resources for its own developmental purposes (Priye, 2005).

Resource Control is therefore rooted in the desire by some Nigerian patriots to promote the practice of True Federalism as the most efficient means of unbinding all sections of Nigeria from the shackles that have weighted them down since the first military misrule, thus making it possible for us to harness our vast economic potentials towards rapid development and progress of our nation. The history of extractive mineral production, which today is limited to oil and gas, presents a study on the one hand, in extreme frustration on the part of those in whose land and territorial waters such minerals are found; and on the other hand, aggravation on the part of legitimate exploiters.

Germane to the issue of Resource Control is Derivation. This is the nexus of this paper. It is regrettable that those who wanted to cause confusion sometimes used Resource Control and

Derivation interchangeably. The distinction between Resource Control and Derivation is very important to our understanding of the issues. Derivation simply posits that if any mineral in any state is exploited and it yields revenue, then a certain percentage of that revenue shall be retained (given back) to that State on the principle of derivation while the rest will accrue to the Federation Account to be enjoyed by all the federating units. Today, the 1999 constitution of Nigeria provides that at least 13 per cent of such revenues will go to the derived source while the balance of 87 per cent will accrue to the Federation Account. This is regardless of how, or by whom the mineral is mined. It was therefore a wicked campaign of misinformation to suggest that by Resource Control, the Niger Delta States wanted to keep back 100 per cent of the revenue derivable from their mineral deposits of oil and gas (Priye, 2005). For the politicians, resource control appears to consist of a review of the constitutional 13 percent derivation, which accrues to oil-bearing states. Although, no fixed percentages are being canvassed, political opinion seems to favour a return to the Republican constitution's provisions, which granted 50 percent retention of natural resources, or earnings therefrom, by the region which owns the said resources. But even more important than that 50 percent is the consideration of who runs the business; who is responsible for distributing the resources accruing thereof, and who is ultimately in charge of allocating the issues of the good life accruing from the oil and gas business.

Obnoxious as some of the laws are that govern the ownership of natural resources, the fact remains that today, all minerals in, upon or under all of Nigeria's soil and waters, belong to the Federal Government. It is the Federal Government therefore that issues licenses for their exploitation. Resource Control has never challenged or conflicted with this law. All that Resource Control seeks to do is more and more, and to the extent that is possible, to vest the exploitation of these minerals in capable indigenous companies. As has been demonstrated, this will create local jobs bring about the much needed transfer to technology and the development of local skills; promote local entrepreneurship; accelerate the pace of development and engender a sense of belonging and involvement in the control of one's destiny. This is bound to bring about peace and harmony and there can be nothing more precious than that (Priye, 2005).

This is what the principle of derivation was propounded for and the 13 per cent of all that accrues to Nigeria via oil goes to these few states before the sharing of the remaining 87 percent jointly. It is a lot of money that can turn the life of people around if judiciously used for the good of the states and not hijacked by few privilege and powerful few in these states but, considering the turn of events in Nigeria where Abuja is like haven while the entire Niger-Delta is hell, the 13 % derivation became too small couple with the onshore-offshore dichotomy that seeks to wrestle away some money accrued to these states from the constitutionally sanctioned 13 %, so the oil-producing states went all out demanding for a greater input in the control and management of oil business in the country. They want the following changes so that equity can take place in the allocation of revenue and the use of oil revenue for the development of the country:

The restoration of the principle of derivation as the impetus for the allocation of oil revenue.

A demand for increase in oil revenue allocation from the current 13% to 25 or 50%.

The elimination of the Petroleum Act, the Land Use Decrees, the National Waterways Decree, and any other law or decree which concentrates too much power in the hands of the national government and contributes to the unequal distribution of oil revenue.

The management of the oil business by the states and not by the Federal Government.

A true national development plan that is reflective of the national character and not selective development (Priye, 2005).

RECOMMENDATIONS

Having had vigorous and meticulous review of the Nigerian fiscal federalism with emphasis on resource control and derivation principle, we recommend the following plausible solutions:

1. That there should be a restoration of the principle of derivation as it is the impetus for a proper allocation of oil revenue in a federal system like Nigeria.
2. That there should be an upward review of the derivation principle percentage to increase the oil revenue allocation from the current 13% to 25 or 50%.
3. To ensure the elimination of the Petroleum Act, the Land Use Decrees, the National Waterways Decree, and any other law or decree which concentrates too much power in the hands of the national government and contributes to the unequal distribution of oil revenue to ensure faithful application of a fair and new derivation principle formula that will engender peaceful and harmonious co-existence in the country.
4. That the geese that lay the golden egg should be specially taken care of hence there is nothing wrong in developing the oil- producing communities as such act will only help in the development of the entire nation. This is based on the fact that these communities are producing the resources with which the entire nation is based on. A look at Abuja will convince any ardent observer that there is nothing wrong with developing these communities.

CONCLUSION

Nigeria is a federal state having 36 states, 774 local governments, the Federal capital Territory (FCT) and its 6 development units as its federating units, is naturally blessed and endowed. Naturally, these federating units are unequally endowed in terms of natural resources but some states are blessed with crude oil which since the mid 70s has constituted the mainstay of the national economy. Prior to this time, at issue has been the arrangement of pattern of relationship amongst the federating units administratively and financially, which contemporarily has not abated. On the process, several commissions, committees, degrees and constitutional amendments ensued to ensure an existence of a virile and sustained federation called Nigeria but those states from whose soil the crude oil is found have always asserted a claim that in a true federation, each of the federating units should have adequate control of its resources. Consequently, the federal government thought of an arrangement which could then be reached that would enable the whole federation to benefit from the resources but not at the expense of those producing it. This is where the principle of derivation comes in. The principle of derivation seeks to give back a certain percentage of revenue to a state where mineral is found and exploited and it yields revenue, while the rest will be enjoyed by all the federating units. This derivation stands currently, at not less than 13 per cent courtesy of the 1999 constitution of Nigeria. But these states that play host to this crude oil are asking why are other cities of Abuja etc well developed while theirs from which this oil hails is not developed? Again, why is it that companies in their communities are filled with staffs from outside while their people are unemployed? They ask why is it that their roads are death traps, schools dilapidated, general hospitals out of drugs and lack qualified doctors and finally, why is it that power and even water is not available in a land that houses the engine of the economy. They resort to resource control. The issue with resource control is that it meant different thing to different people of the oil producing states. To some, they want a 100 per cent of what accrues to their oil. To others, they

want the federal government to stay away from their oil, but to some, they want an upward review of the percentage of derivation factor in the 1999 constitution of Nigeria which poses no threat to the constitution as it already stated that 13 per cent is the least and therefore can extend to any limit, and also an involvement in the oil business. Truthfully, there is nothing wrong with the last assertion. Therefore, the problem with the call for resource control in the oil producing state is their diverse and divergent understanding and stand on the issue of resource control.

The solution is a well articulated and united call for an upward review of the constitutionally enshrined derivation principle to at least 25 percent and also states involvement in the oil business where all the oil producing states must have serious stakes in the oil business, to the extent that NNPC should have oil producing states versions. There and then will “Resource Control” and “Derivation Principle” cease to be issues in the Nigeria’s Fiscal Federalism.

Therefore, it is the contention of this paper that the Nigeria fiscal federalism was and is still contentious, and that its contentiousness stems from the application of the Derivation Principle.

Again, the principle of derivation was the magic wand that has managed the problematic nature of the Nigeria fiscal federalism until it was de-emphasized and consequently abolished in the Nigerian revenue allocation scheme. Especially, during the military era, even though it was reinstated but its margin was abysmally low, lending credence to the call for resource control.

Finally, there is a positively significant relationship between resource control and derivation principle. For once, it was as a result of the negation of the tenet of derivation which led to massive exploitation and marginalization of the oil producing states that awake the call for resource control. Again, if a fair and upward review of the derivation principle occasioned with sincerity in application, the call for resource control may go on sabbatical. But turning deaf ear to it will worsen the situation as the people will keep coming may be change the name of the game.

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