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Federalism, Intergovernmental Relations and the Headmaster complex in Nigerian Federalism 1999-2007

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Abstract

Between 1960 and 1999, the Nigerian 'federal' state had had twenty eight years of military leadership. Thus rather than being ruled as a federal state, the military ruled it as a unitary state with total disregard for the fine tenets of federalism. However, the post 1999 military period provided a conducive climate for robust debates and discourses in the political and legal climes on issues of allocation of tax powers and expenditure responsibilities and the custody of the federation's funds. Here the state governments contested the overbearing influence and jurisdictional competence of the centre in matters of the "commonwealth". These contests have had serious implications for intergovernmental relations in contemporary Nigeria. Using the longitudinal approach, the paper examines the various contours of intergovernmental relations in Nigeria between 1999 and 2007. The study relied essentially on primary sources from the national archives for the reconstruction of the historical background of this piece. The paper also analyses the post 1999 contestation between the centre and federating units on revenue sharing. Secondly it evaluates the role of the Judiciary in adjudicating between the centre and component units particularly on the issues of apportionment of oil revenue in the fourth republic. The central problem of this paper is that why has the contest over revenue allocation been so intense? Much more importantly, why did the central leadership in that dispensation (personified by the President) have so much challenges with intergovernmental relations? Also why did the regime engage in acts which undermined the ethos of federalism and reinforce the unitary traditions of the preceding military regime? This article contends that given long years of military rule, the administrators and politicians in Nigeria have not internalized the sacred ethos of federalism and the federation has to all intents and purposes remained a unitary state in the garb of a federal state. The paper affirms that the challenge is first and foremost a constitutional problem. It suggests ways by which the dominance of the centre can be diluted towards a coordinated relationship fostered between the centre and the federating units.

Introduction

On the 29th of May 1999, Nigeria reverted back to civil rule after long years of military rule. Chief Olusegun Obasanjo, a former military head of state was elected as the second executive President of Nigeria. Vertical

intergovernmental relations in the Nigerian Fourth Republic was marked by stiff competition and conflict rather than cooperation especially on revenue sharing matters. Probable reasons for conflict were the long years of military rule (which destroyed every fabric of orthodox federalism) and personalist style of the president who had a military background.

The arena of revenue allocation was a seriously contested terrain in this period due to certain reasons. For one federally collected oil revenues is the main stay of the finances of federal and state governments, accounting for a little over 90% of their (states') total revenue. Upon this revenue therefore depends the ability of the state governments to maintain their services, remunerate their staff, pay for essential goods and execute their developmental and infrastructural projects. Their financial viability and creditability as autonomous governmental units hang upon it. As far as these states are concerned, the driving force for its sharing (revenues) is understandably one of self survival. For them sharing is almost like a matter of life and death, exciting their deepest concern and their strongest emotions.²³³

What obtained in the fourth republic contrasted much with what obtained in the first republic where revenue distribution arrangement allowed each region to retain much of what it generated in revenue. This subsequently gave the regions the wherewithal to compete among themselves and to initiate major socio economic and development projects.²³⁴ Quite apart from general agitations for by all the component units, the oil producing states which provided the revenues that sustained the Nigerian federation were in the fourth republic, subjected to federal government's politics an intrigues. These states were progressively denied their fair share of revenues from their oil resources. Discouraging policies included the institution of repressive acts such as the onshore- off shore dichotomy Act and the 200metres Isobath Act. Other unpopular policies of the regime included the invasion of states' jurisdictions and deliberate withholding of budgetary entitlements of some subunits in a democratic federal state.

Be that as it may in the view of Carol Left, federalism, after all, is generally understood as an institutional arrangement whereby authority and functional competencies are shared among different levels of government. Federalism has also been associated with other virtues such as promoting, Justice, equity, equality, Stability, freedom, self determination and democracy. The acclaimed mechanisms through which federalism achieves

²³³ Ben Nwabueze, *Federalism in Nigeria under the Presidential constitution* (London: Sweet Maxwell, 1983), p. 181.

²³⁴ Francis Emenuo, "Power Devolution in a Federal State: Implications for Intergovernmental Relations", in Tunde Babawale et.al, (eds.), *Devolution of Powers in a Federal State*, (Lagos: Friedrich Ebert Foundation, 2000), p. 74.

these goals are two-fold: "sharing of authority and competencies between levels of government"; and protecting identity and autonomy against domination²³⁵.

However these two planks are absent in the Nigerian federal system (which is basically a constitutional problem) and their absence has perpetually maintained the federation as a pseudo federal state. With the transition from military rule to a democratic regime in 1999, it was expected that the civilian regime in the fourth republic would adapt itself to the theoretical demands of federalism and its accoutrement fiscal federalism. Eight years on however the civil regime has neglected the fine tenets of robust, growth oriented federalism and inter governmental fiscal relations in the governance of the federation. To start with we would attempt a synoptic definition of core terms.

Conceptual Issues

Federalism is an unsettled concept. It has been defined in different ways and manifested in divergent institutional forms. However, the consensus is that the essence of federalism is the constitutional sharing of powers of government between a central government and a number of constituent units. The extent to which each tier of government enjoys autonomy within its area of competence is usually taken as a valid measure of a true federation.²³⁶ According to Bolaji Akinyemi however federalism is an acknowledgement of diverse interests that need to be accommodated. All it really resolves is that these interests will be accommodated within one sovereign nation.²³⁷ Graham Smith sheds more light on federalism with his definition. He sees federalism as an institutional arrangement designed to secure within deeply divided societies, social unity and stability²³⁸. A much more precise and definitive definition is that by Nwabueze which affirms that federalism is an arrangement whereby powers of government within a country are shared between a country wide government and a number of regionalized (i.e territorially localized) governments in such a way that each exists as a government separately and independently from the others, operating directly on persons and property within its territorial area, with a

²³⁵ Fred Onyeoziri, "Federalism and the Theory of State", in Ebere Onwudiwe and Rotimi T. Suberu (eds.), *Nigerian Federalism in Crisis: Critical Perspectives and Political Options* (Ibadan: John Archers, 2005), p. 17.

²³⁶ Emenuo, "Power Devolution in a Federal State, p. 68.

²³⁷ Akinyemi Bolaji, *Foreign Policy and Federalism: The Nigerian Experience* (Lagos: Macmillan Nigeria, 1986), p. 1.

²³⁸ Graham Smith, "Mapping the Federal Condition: Ideology, Political Practice and Social Justice", in Graham Smith, (ed.), *Federalism: The Multi-Ethnic Challenge* (London: Longman, 1995). pp. 3-4.

will of its own and its own apparatus for the conduct of its affairs, and with an authority in some matters exclusive of all others. Federalism is thus essentially an arrangement between governments, a constitutional device by which powers within a country are shared among two tiers of government rather than among geographical entities comprising different peoples.²³⁹ The key denominators in these definitions are the existence of two levels of sovereign governments, which are coordinate, possessing adequate authorities to conduct their affairs, independent of other coordinate powers but still belonging to the same union.

Fiscal Federalism

This is the allocation of revenues, tax powers and expenditure responsibilities among the different tiers of government in a federation in a fair, just and efficient manner, taking into cognizance the various levels of contributions of component parts to the federal purse.

Intergovernmental Relations

Contextually, this refers to the vertical fiscal relationship that exists between the centre and federating units. Deil Wright defines intergovernmental relations as "comprising all permutations and combinations of relations among the units of government in a federal system".²⁴⁰ However, despite formal division of responsibilities, intergovernmental fiscal relations within federations are often marked by cooperation, competition and conflict.

Headmaster Complex

This term is used here as a euphemism for the President (Philosopher king) with pre-eminent authority and over bearing influence of the centre in the affairs of the commonwealth (federation). In the Nigerian state, the long years of military rule has eroded the practice of the fine tenets of fiscal federalism. Hence fiscal centralism has been the order of financial relations between the federal government and the federating units. The robust sources of the federation's wealth are managed by the central government with constitutional backing while the states and local governments have to make do with meagre statutory allocations from the centre and receipts gotten from paltry source such as market tolls, court fines, vehicle licenses and other miscellaneous resources. In addition the military styled constitution has invested the office of the President with enormous powers such that the no single state governor or group of governors can rival the influence of the President in fiscal matters.

²³⁹ Nwabueze, "Federalism in Nigeria under the Presidential Constitution", p. 1; Emenuo, "Power Devolution in a Federal State", p. 72.

²⁴⁰ Emenuo, "Power Devolution in a Federal State", p. 72.

Understanding federalism and Intergovernmental relations:

According to Ronald Watts, federalism is essentially the combination of collective rule for some purposes and regional self rule for others within a single political system so that neither is subordinate to the other. Furthermore, the function of the federations is not to eliminate internal differences or conflicts, but rather to manage it in such a way that regional differences are accommodated.²⁴¹ Also the federal system of government is one in which the expenditure and revenue functions are divided among different levels of government. The essence of this division is to facilitate the provision of certain goods and services at different levels which is justified on the existence of public goods which may be consumed nationwide or whose benefits are restricted to a particular geographical area.²⁴² But how well this is done has in practice depended on the particular form of the institutions adopted within the federation. Thus intergovernmental relations is a strong component in this regard. Its workings²⁴³ in any one federation is fundamental to the effective functioning of the mechanics of that federation as it has the ability to make or mar such federal political entities. Following from this, the main issues of intergovernmental fiscal relations concern the spending responsibilities, revenue raising responsibility, intergovernmental transfers and administrative aspects of fiscal decentralization. There is a consensus in literature that decentralization of spending responsibilities to lower levels of government will ensure efficient allocation of resources for the provision of local public goods and services which most closely represent the aspirations of the people at that level. The proper coordination and implementation at the different stages of the allocation of taxing powers and expenditure responsibilities helps to ensure macro stability²⁴⁴ in the federation.

A Historical Synopsis of Vertical Revenue Allocation in Nigeria

The apportionment of revenues among different tiers of government in Nigeria dates back to the Richards constitution of 1946 which granted internal autonomy to the regions and shared fiscal responsibilities between

²⁴¹ Onyeoziri, "Federalism and the Theory of the State", p. 16–17.

²⁴² J.O. Ebajemito and M.I. Abudu, "Intergovernmental Fiscal Relations in a Federal System: The Nigerian Experience", in Ben Aigbokhan (ed.), *Fiscal Federalism and Nigeria's Economic Development: Proceedings of the NES 1999 Annual Conference, Ibadan* (Ibadan: 1999), pp. 216–217.

²⁴³ Onyeoziri, "Federalism and the Theory of the State", p. 16–17.

²⁴⁴ Ebajemito and Abudu, "Intergovernmental Fiscal Relations in a Federal System", p. 217.

the federal and regional governments.²⁴⁵ Since 1946, ad-hoc commissions and military decrees had dominated the revenue sharing process. The initial commission was the Philipson commission of 1946 which allocated to the regional governments a little portion of the budgetary needs of the centre. The distribution of independent regional revenue was based on derivation and even progress.²⁴⁶ The principles provoked inter regional hostility.²⁴⁷ The next commission was the Hicks Philipson commission of 1951. Hicks recommended three principles of Derivation, Needs and National interest for sharing interregional revenues. Hicks admitted that financial relations between the regions and the centre were distinctly unfair. He thus strengthened fiscal autonomy of regions by opening the window of independent taxes which regions could control and calibrate while still relying on grants from the centre through the formula system.²⁴⁸ Louis Chick commission of 1953 recommended the reallocation of a substantial proportion of centrally collected revenues on the basis of regional derivation or consumption. This was institutionalized and adhered to.²⁴⁹ The centre's unbridled use of derivation caused some interregional conflict but ensured that the bulk of the nation's revenue from import duties and export duties went to the region's of origin.²⁵⁰ The last colonial commission, the Raisman - Tress Commission, introduced the Distributable pool account (DPA) and enhanced fiscal autonomy of the regions by broadening the scope of independent regional revenues.²⁵¹

One discernible fact here is that the colonial commissions sought for ways and means of enhancing the fiscal efficiency and autonomy of the federating units within the framework of a "federal state" but equity was not at the heart of the apportionment of national revenues.

²⁴⁵ Mbanefo Gini, "Public Finance", in M.O Kayode and Y.B Usman (eds.), *The Economy: Nigeria Since Independence, The First Twenty-Five Years*, Vol. 11 (Ibadan: Heinemann books, 1986), p. 191.

²⁴⁶ Pius Okigbo, *Nigerian Public Finance* (Evanston: Northwestern University Press, 1965), pp 22-23.

²⁴⁷ N.A.I. NC / N12, Record of Proceedings. The resumed constitutional conference on the Nigerian Constitution held in Lagos between January and February 1954, p. 187.

²⁴⁸ N.A.I. CE/H6 J. R. Hicks and S. Philipson, *Report of the Commission on Revenue Allocation* (Lagos: Government Printer, 1951), p. 55.

²⁴⁹ N.A.I. Jabez Smith, Draft Report of Nigerian Constitutional Conferences Lagos (1954), Jabez Smith's Review Note p.205.

²⁵⁰ *Ibid.*

²⁵¹ N.A.I. NC/B14, *Report of the Nigerian Constitutional Conference held in May/June, 1957 in Lagos* (Lagos: Federal Government Printer, 1957), pp. 18-19.

Post-Colonial Fiscal Commissions

It is interesting to note that post colonial commissions from Binns commission onwards have progressively sought for ways to reallocate substantial amount of the nation's revenues in favour of the centre to the detriment of the states. The first in line was the Binns commission of 1964 which hiked the share of distributable pool account from 30% to 35%.²⁵² In 1968 the Dina commission under the regime of General Yakubu Gowon gave a higher proportion of total national revenues to the federal military government with the most lucrative sources of revenue going to the federal government.²⁵³ In 1970, Decree no 13 of 1970 was promulgated and this further reduced mining rents and export duties that went to states from 100% to 60%.²⁵⁴ Other decrees promulgated were decrees no 9 of 1971 and no 6 of 1975. The former removed from the states' pool, the entire rents and royalties from offshore petroleum mining.²⁵⁵ The later reduced the states' share of the onshore oil revenues from 45% to 20%.²⁵⁶ In 1977 the Aboyade commission under General Murtala/Obasanjo regime recommended the establishment of a federation account for all federally collected revenue with the centre taking and controlling 60%, with 40% for lower tiers of government.²⁵⁷ Aboyade's recommendations was rejected by the Constituent assembly and seen as too complicated.²⁵⁸ The civilian regime of Alhaji Sheu Shagari in 1980 commissioned the Okigbo revenue commission which recommended 53% of national revenues for the federal government and 40% for the lower tiers and 2% for special areas.²⁵⁹ The government white paper took 2% from the lower tiers to make 55% for the central government.²⁶⁰ The Shagari regime eventually used the 1981 revenue

²⁵² A G. Adebayo, *Embattled Federalism: History of Revenue Allocation in Nigeria 1946-1990* (New York: Peter Lang Publishing, Inc., 1993), p. 126.

²⁵³ *Ibid.*, p. 137.

²⁵⁴ Ogunyemi A.O, "Federal Budgets in Nigeria, 1954-2000: A History of Process Policies and Problems", A Ph.D. Seminar Paper, Department of History, University of Lagos (July 2005), p. 12.

²⁵⁵ *The Guardian* (Lagos) (Wednesday 24, January, 2004), p. 8.

²⁵⁶ *Daily Times* (Lagos) (10th March, 1975), p. 1. See also, Billy Dudley, *An Introduction to Nigerian Government and Politics* (London: Macmillan Press, 1982), p. 260.

²⁵⁷ T.Y Danjuma, "Revenue Sharing and the Political Economy of Nigerian Federalism", in J. Isawa Eliagwu et al., (eds.), *Federalism and Nation-Building in Nigeria: Challenges of the 21st Century* (Abuja: Intergovernmental Resources Publishers, 1994), p. 91-92.

²⁵⁸ *Ibid.*, p. 92.

²⁵⁹ Dudley, *An Introduction to Nigerian Government and Politics*, p. 262.

²⁶⁰ Emenuga Chidozie, "Nigeria: The Search for an Acceptable Revenue Allocation Formula", Paper presented at the *Nigerian Economic Society (NES) 1993 Annual Conference* (Ibadan: NES, 1993), p. 86.

allocation Act to share national revenues with 55% for the center and 45% going to the lower tiers.²⁶¹

In 1984, the Muhammadu Buhari through decree no 36 of 1984 modified the 1981 act by reducing special funds from 4.5% to 2.5%. By implication it reduced revenues to oil producing states.²⁶² In 1989 the federal military government (FMG) of General Ibrahim Babangida established a permanent commission- Revenue mobilization and fiscal Commission (NRMAFC) recommended a substantial slash in federal share of national revenue that is federal 47% and lower tiers with special funds-53%. However in January 1991 the FMG subsequently increased the FMG's share of national revenue from 47% to 50% while down grading special funds' derivation component to 1%.²⁶³ Recentralisation of governmental financial relations was a defining feature of the FMG in 1992. The positive measure here was the improvement in revenues allocated to the development of oil producing areas from 1.5% to 3%.²⁶⁴ This arrangement of federal dominance in revenue sharing subsisted 1999 when the fourth republic was inaugurated.

Certain deductions that can be made from this section is, that between 1946 and 1964 when the colonial commissions operated, the enhanced financial status of the regions did not really derive from any significant expansion in the regions' independent revenues. Rather it derived from an increase in their constitutionally mandated shares of federally collected revenues. From the latter part of the 1960s however, federal funds began to dwarf sub-units' funds in a supposedly federal state where the levels of government ought to be coordinate.

Certain factors informed the monumental ascendance of federal funds over those of component units. These factors are, the inception of military rule in 1966, the unitary, centrist character of military rule, the notable impact of oil on public finance (funds) and the urgent need of the centre to secure enough funds to help finance the war effort (Nigerian civil war) as well as run the corporate Nigerian economy. These factors have till date left a culture of massive fiscal centralization and federating units' perpetual fiscal dependence on the centre from which states are yet to recover.

²⁶¹ R.N. Okoh and P.C. Egbon, "Fiscal Federalism and Revenue Allocation", in Ben Aigbokhan (ed.), *Fiscal Federalism and Nigeria's Economic Development*, Proceedings of the NES 1999 Annual Conference (Ibadan: NES, 1999), p. 410.

²⁶² Chidozie, "Nigeria: The search for an Acceptable Revenue Allocation Formula", p. 87.

²⁶³ *Ibid.*, p. 87. See also *Central Bank of Nigeria Annual Report, 1996* (Lagos: CBN, 1996), p. 52.

²⁶⁴ Danjuma, "Revenue Sharing and the Political Economy of Nigerian Federalism", p. 101.

The Contest over Vertical Revenue Allocation 1999-2007

With the inception of civilian rule in 1999 an enabling environment was created for robust debates and discourses in political and court circles over revenue allocation, allocation of tax powers and expenditure responsibilities in the Nigerian federation. The contentious questions ranged from, what proportion of the national revenue should go to each tier of government, what principle and percentages should guide the sharing of these resources and who exercises the right to determine each tier's share of national income?

Much more importantly, from 1999 there emerged a robust political and legal resistance to the centre's monopoly of the federation account. This is a far cry from what obtained in the military era where unquestionable obedience secured for the military regimes enough room to maneuver monopolise and unilaterally misappropriate the country's national resources.

On intergovernmental fiscal relations, in June 2000 the thirty six state governors condemned the subsisting revenue allocation formula as being unduly favourable to the federal government and called for a reduction of federal government's share from 48% to 30%.²⁶⁵ Also in October 2000 the seventeen in the new democratic dispensation met and unanimously endorsed total control of their resources.²⁶⁶ They accused the federal government of operating a first charge system (which is true) whereby 50-60% of federal revenue is unilaterally withdrawn from the nation's purse leaving 40% to 45% to be shared among the tiers of government and out of which the federal government takes not less than 48% as its own share. The governors further threatened to take the federal government to court (which they did) if it continued with these illegal deductions and other unconstitutional acts²⁶⁷ which only served to perpetuate vertical fiscal imbalance. The federal government did not respond until August 2001 when in conjunction with Revenue Mobilization Allocation and Fiscal Commission (RMAFC), it sent its proposed revenue allocation formula to the National Assembly for study and possible ratification. The proposed percentages for the sharing of the federation account which hiked some and reduced the other were as follows, federal government, formerly 48.5% now 41.3%, states 24% now 31%, Local governments 20% now 16% and special funds 2.8% now 11.7%, which was also to be retained by the federal government.²⁶⁸

²⁶⁵ *The Guardian*, Lagos (June 23, 2000).

²⁶⁶ *Post Express*, Lagos (Wednesday, October 11, 2002), p. 2.

²⁶⁷ *The Guardian*, Lagos (Sunday, January 14, 2001), p. 14.

²⁶⁸ *Daily Times*, Lagos (Friday, August 31, 2001), p. 9.

Meanwhile in February 2001, the Attorney General of the Nigerian federation initiated a legal dispute in the Supreme Court between the federal government and the littoral oil-producing states over the control of offshore oil revenues. The Supreme Court in April 2002 passed its judgement. A fall out of that judgement (which is relevant here) is the court's declaration that the federal government's deductions of certain revenues from the federation account (before the allocation of the account to the three levels of government) are unconstitutional.²⁶⁹ This declaration vindicated the earlier stance of the southern governors who had initially in October 2000 declared as unconstitutional, the centre's "first line" charges on the federation account.

In September 2001, the fourth summit of southern governors at Ibadan, rejected the proposed changes and affirmed that it was unrealistic as it negated the principles of fairness and equity. They in turn proposed that the federal government should instead retain 36%, give the states 36% also, and allocate to the local governments 25%, Federal Capital Territory 1% and Ecology 2%. This according to the governors reflected equity and fairness.²⁷⁰ Quite obviously, one reason why the governors rejected the new formula was because, they believed that the expected slash in central government's share of the federation account would be compensated for with the proposed expansion in the size of centrally controlled special funds (2.8% now 11.7%).

While RMAFC was waiting for parliamentary response on the proposed revenue formula changes (which took over two years to prepare), the Nigerian president in an executive order unilaterally amended the allocation of revenue (federation account etc) act in May 2002 and backdated it to May 29, 1999. This was done without the consent of the National Assembly. This is reminiscent of the years of military and dictatorial rule when decrees were rolled out unilaterally and backdated to whichever date to suit the whims and caprices of the maximum ruler. In the amendment, the president increased the federal government's allocation from 48.5% to 56% while states and local governments were left stagnant with 24% and 20% respectively. The civilian president affirmed that the federal government's increased allocation was arrived at by the additional allocation of the 7.5% previously standing to the benefit of the special funds (meant for the littoral states) but now appropriated by the federal government because of the supreme court's ruling of April 2002 on the onshore - offshore dichotomy matter. The House of Representatives in its response said that the president's action constituted a breach of the 1999

²⁶⁹ Rotimi Suberu, "The Politics of Fiscal Federalism in Nigeria", Conference paper presented at Northwestern University, Evanston, Illinois, USA (2002), pp. 10-11.

²⁷⁰ *Daily Times*, Lagos (Tuesday, September 11, 2001), p. 58.

constitution which states that “such matters (revenues allocation) must be processed in the National Assembly through the due legislative and parliamentary procedures.²⁷¹ Not until after this that such amendment can become law”.²⁷²

Other breaches of the Olusegun Obasanjo regime were the misapplication of budgets, illegal withdrawal of funds from the consolidated accounts to fund extra budgetary projects like the Niger Delta Power Project, NPR conference, Paris club debt exit payments and extension of the enumeration exercise for the National Population Census.²⁷³ All of these acts contravene the 1999 constitution, section 80 (1-4) which explicitly states that the National Assembly should approve every expenditure from the consolidated Revenue fund of the federation. It states: “No monies shall be withdrawn from the consolidated revenue fund of the federation or any other public fund of the federation, except in the manner prescribed by the National Assembly²⁷⁴ (see 1999 constitution). The president rationalized his unilateral action of illegal withdrawals by saying that “the withdrawal was a last minute measure to save the 2006 national population census from being a total failure. Two extra days were allocated for the exercise outside the originally planned period, thus requiring emergency expenditure.” Rationalising the breaches further, Dr. Okonjo Iweala, the then finance minister said “... although the senate appropriated the Paris club exit payment from the consolidated revenue fund, the actual payment was sourced from the excess crude and PPT accounts. As there was no money in the consolidated revenue funds “Mr. President sought for and obtained the full consent of governors and other stakeholders (sidelining federal legislators) to fund the exit payments with a loan from the excess crude²⁷⁵ account. The most worrisome situation here is that against the ruling of the Supreme Court judgment of April 5, 2002, which ruled that each debtor state should pay its own debt, the central government forcefully assumed this jurisdiction of the states. In addition states such as Kaduna and Nasarawa that were not owing the Paris club any debts had their portions of the excess proceeds not disbursed to them.²⁷⁶

These were arbitrary acts of the central government which were unconstitutional, so much so that the executive sought to usurp the duties of

²⁷¹ *The Guardian*, Lagos (Sunday, July 28, 2007), p. 18.

²⁷² *Constitution of the Federal Republic of Nigeria, 1999*, Section 162 on Public Revenues, Subsection 2 (Lagos, Government Printer, 1999).

²⁷³ “Illegal Withdrawals from Excess Crude Funds”, *The Guardian*, Lagos (Sunday, June 18, 2006), pp. 20 and 57; *The Guardian*, Lagos (Thursday, August 24, 2006), p. 8.

²⁷⁴ *The 1999 Constitution of the Federal Republic of Nigeria*, Section 80 (1-4).

²⁷⁵ *The Guardian*, Lagos (Sunday, June 18, 2006), p. 57.

²⁷⁶ *Ibid.*

other arms of government. This also runs contrary to the ideals of federalism which is only compatible with the tenets of shared rule and diversity.²⁷⁷

The Judiciary, Federal and State Governments and Oil Revenues in the Fourth Republic

Profound developments too have occurred in the legal dimes in the Olusegun Obasanjo civilian administration between the thirty six states (especially the littoral states) and the federal government. On the 11th of July 2001, the Supreme Court declared in a case between the state and the Federal government that “there can be no boundary dispute between the federation and individual states whether littoral or otherwise, since the boundaries are the same.”²⁷⁸ Another case came up again between the federal government and littoral states over the on-shore–offshore issue.

Oil dichotomy in the application of resource control (an euphemism for control of oil resources by littoral states). The Attorney General of the federation took the matter to the Supreme Court for adjudication. Thus on April 5, 2002, the Supreme Court ruled in favour of the federal government positing that, “the seaward boundary of the littoral states do not extend to the exclusive zone or continental shelf of Nigeria” and that only the federal government has control over the resources in the area”.²⁷⁹ That judgment smacks of inconsistency on the part of the Supreme Court if the former ruling of 11th July 2001 is juxtaposed with the ruling of April 5, 2002.

Consequently, revenues from oil mineral in that area (offshore) were not considered in the computation of revenues due to such littoral states from the federation account. It also meant that the 13% derivation fund would not be paid to the littoral states in full. This was a huge loss in revenue terms to oil producing states especially Akwa Ibom whose crude oil resources are mostly off-shore.

It is also instructive to note that the nature of oil as a wasting asset implies that states with on shore oil stand to also lose out in the future when the oil runs out, by which period oil firms operating in the present on shore location would have relocated elsewhere. Oloibiri is a classic example as that was the first place in 1958 that crude oil was discovered in large quantities. However as it stands today the Oloibiri community does not benefit from the 13% derivation fund as it has ceased from bearing crude oil. In Ben Nwabueze’s condemnation of the federal government’s attitude to the rights of the littoral states he said... “if international law accords these special rights to coastal states, because of the vulnerability of their

²⁷⁷ Ebere Onwudiwe and Rotimi Suberu, “The Promise and Pitfalls of Nigerian Federalism”, in Ebere Onwudiwe and Rotimi Suberu, (eds.), *Nigerian Federalism in Crisis*, p. 4.

²⁷⁸ *This Day*, Lagos (Sunday, May 5, 2007), p. 23.

²⁷⁹ *The Nigerian Tribune*, Ibadan (Friday, May 6, 2005), p. 18.

proximity to the sea, it smacks of meanness, insensitivity, injustice, inconsolableness and oppression for the federal government of Nigeria, a beneficiary of the kind indulgent concession of international law, to deny to the country's littoral states a paltry 13% of the revenue derived from mineral resources located in their territorial waters, continental shelf or exclusive economic zone contiguous to their territory.²⁸⁰

The oil producing states subsequently renewed their agitation and this development exacerbated crisis in the Niger Delta region again. The National Assembly too had prior to the ruling (of April 2002) revoked the dichotomy Act which the president refused to sign into law.²⁸¹ With the pressures from the Niger Delta and, knowing fully well that the Supreme Court judgment would not enhance fiscal federalism and fairness (but would rather enhance the neglect and restiveness in the Niger Delta region), the president proposed a political solution which was contained in the allocation of revenue Act 2004. The Act abolished the dichotomy in the application of Derivation and provided also that 13% of the revenue derived from oil should go fully to the oil producing states. A controversial clause added to the Act was that the 200 metre depth isobath contiguous to a state of the federation shall be deemed to be part of that state for the purposes of computing the revenue accruing to the federation account from the state.²⁸² Furthermore the president unilaterally gave ₦600 million and ₦210 million to Akwa Ibom and Ondo states respectively as part of the political solution.²⁸³ In actual fact the inclusion of the 200 metre isobath clause made of no effect (rubbished) the abrogation of the dichotomy law because most of the mega oil funds are no longer onshore or in shallow offshore (within 200 metres) but in the deep offshore measuring between 3,673 and 3,745 feet deep, like Erha and Bonga oil fields.²⁸⁴ Erha will produce 210,000 barrels of oil a day and 300 million Cubic feet of gas daily.²⁸⁵ The Nigerian coastal states, off whose shores these tremendous finds are being made, will not enjoy any derivative rights in these deep sea areas since derivation is limited to 200m isobath. In fact the deep off shore will progressively yield an increasing proportion of Nigerian oil and gas. As the land and shallow offshore (200m) reserves are getting exhausted, the deep offshore reserves beyond 200metres will keep increasing. In short the future of Nigerian oil and gas exploration and exploitation is in the deep offshore, outside the

²⁸⁰ *The Guardian*, Lagos (Thursday, April 14, 2005), p. 8.

²⁸¹ "Threats in the Delta", *The Punch*, Lagos (Thursday, June 5, 2003), p. 16.

²⁸² "Supreme Court on the Revenue Allocation Act", *The Guardian*, Lagos (Wednesday, January 4, 2006), p. 12.

²⁸³ *The Guardian*, Lagos (Sunday, July 28, 2007), p. 18.

²⁸⁴ *The Punch*, Lagos (Thursday, March 28, 2002), p. 23.

²⁸⁵ *The Punch*, Lagos (Thursday, May 11, 2006), p. 28.

derivation zone granted to the littoral states under the 200 meters isobath Act.²⁸⁶

While the oil producing states were still pondering on their fate in the Nigerian federation, the nineteen Northern states' governors in collaboration with their south-western counterparts of Ekiti, Osun and Oyo (to reflect federal character) challenged the constitutionality of the allocation of revenue Act 2004 and the payment from the federation account of 13% of funds based on derivation to the oil producing states at the supreme court. Thus on December 16, 2005 the Supreme Court unanimously dismissed the suit of the twenty-two state governors, as lacking in merit and upheld the passage and contents of the Allocation of revenues Act 2004 as legal and constitutional.²⁸⁷

Another matter that came up between the Federal government and another federating unit for adjudication before the supreme court and which reinforced the unitary nature of the federal government was the seizure of Lagos state local councils' funds from 2003. The fund was over ₦10 billion. The Supreme Court in its judgment in 2005 declared the President's action as illegal, a breach of federalist principles which emphasized federating units' autonomy in internal affairs. The federal government was asked by the court to release the funds but the President, Olusegun Obasanjo, never complied with this ruling affirming he will not release the funds until Lagos state reverted to the former twenty local councils that subsisted before it broke into fifty seven.²⁸⁸ The President never released the funds till he exited the government on May 29, 2007.

With regard to the executive's handling of the issue of restiveness in the Niger Delta, the President in the year 2000 created the Niger Delta Development Commission (NDDC) to replace the Oil Minerals Producing Areas Development Commission (OMPADEC). The NDDC'S efforts at turning around the socio economic fortunes of the Niger Delta region have been at best cosmetic as it has become a conduit for disbursing largesse to political jobbers and this has not stopped the people of the region from complaining about inadequacy of infrastructural facilities and the likes. This has resulted in continued restiveness in the region with kidnapping of oil workers and vandalisation of oil companies' equipments.

The government too had responded in kind, by sending military expedition forces against the people in the oil bearing communities. The massacres at Odi and Choba bear eloquent testimonies to this assertion. To underlie NDDC'S inefficiency, the president on April 18, 2006 unveiled a multimillion dollar initiative to create 20,000 jobs and build infrastructure in the Niger Delta. This would include drilling of hundreds of wells and

²⁸⁶ *The Guardian*, Lagos (Thursday, April 14, 2005), p. 8.

²⁸⁷ *The Guardian*, Lagos (Wednesday, January 4, 2006).

²⁸⁸ *The Punch*, Lagos (Friday, June 24, 2005), p. 15.

building of a \$1.75 billion highway. This entire package is in a bid to quiet separatist voices and bring peace to Africa's biggest oil export industry.²⁸⁹

Recommendations

In the light of the foregoing challenges there is the urgent need to mend fault lines in intergovernmental relations in the Nigerian federation. The first in the series of recommendations is the constitutional amendment. There should be a constitutional review of the power relations between the central and state governments. The present constitution is a military document. A situation whereby the centre has exclusive legislative powers over thirty items²⁹⁰ is not healthy for a federal system of government where the two levels of government ought to be co-ordinate and non subordinate to the other. Historically the big bang approach (wholesale constitutional amendment) has not worked for Nigeria, thus a gradualist approach to constitutional amendment as a more expedient and feasible option. Existing states should be merged into geo political zones and given autonomy in internal affairs including the generation and management of revenues while they pay appropriate taxes to the centre. This would check duplication of government activities, make governance much more cost effective, compact and encourage efficiency in the delivery of government services. This rationalization process would also help diffuse the currencies of power and discourage the intense rush by politicians to the centre as the centre would no longer hold much attraction for politicians as it currently does. The centre should only concentrate on evolution and implementation of macro-economic policies, foreign affairs, defence and currency. Derivation and special funds should be paid to the local councils and not extra ministerial agencies like NNDC. In addition the citizens should massively mobilize mass movements around issue based civil society institutions. This would perpetually checkmate the illicit use (abuse) of federal power and resources- a challenge that has plagued the federation from inception and checkmated the attainment of the fine tenets of federalism and fiscal federalism.

Conclusion

The preceding critique of the Nigerian intergovernmental fiscal relations should not make us lose sight of some of the dispensation's somewhat redemptive features. These include a democracy, constitutional government, vibrant judiciary, articulate press and combative state governments which are still evolving. Federalism in its elements is incompatible with authoritarianism. The former gives diverse territorial

²⁸⁹ *The Punch*, Lagos (Thursday, April 20, 2006), p. 1.

²⁹⁰ See *The Constitution of the Federal Republic of Nigeria, 1999*, 2nd Schedule.

regional groups and economic agents the relative autonomy to create their opportunities and resources as well as manage them. The latter constricts such opportunities. This paper contends that authoritarian rule was what obtained in Nigeria between 1999 and 2007. This attitude has stagnated social change, truncated the qualitative and quantitative transformation of productive and physical structures of the federation. Here the federal funds were not rationally distributed and utilized as decisions were based on "the ruler's supposed infallible wisdom and what were calculated to please him".²⁹¹ The federal government in this democratic dispensation continued, to all intents and purposes in the unitary tradition of government handed down by the preceding military regimes. In addition the government at the federal level has been overbearing, at times with brazen contempt for court orders and disregard for the Nigerian constitution on revenue matters. The Niger Delta region did not also get a fair deal under this democratic regime as national revenues were still highly centralized. The only redeeming feature here is that the regime has attempted to compensate oil the oil bearing states through partial restoration and expansion of the derivation principle.

The judiciary was very visible in this dispensation of contest over the custody and control of national revenues. The Supreme Court's arbitration most times in these constitutional matters has always favoured the federal government against the federating units. This scenario re-echoes the Australian experience where the Supreme Court has historically been in support of the commonwealth government (Central government) against the federating units in matters of taxing powers and revenue administration.²⁹² Interestingly too, in Nigeria's second republic, the Supreme court ruled in favour of Bendel and Rivers states in a suit they brought against the federal government on revenue allocation matters.²⁹³ In this dispensation, it is a reversal of judgments.

This period also witnessed the shifting of the boundaries of allegiance on revenue matters (back & forth) between the thirty six states and the federal government. We have seen the federal government against

²⁹¹ Adewoye Omoniyi, "Constitutionalism: The Inescapable Route to Development". A public lecture in commemoration of the 15th Anniversary of Osun State, (Osogbo: Paramount Ventures Press, 2006), p. 11.

²⁹² Jeffrey D. Petchey and Perry Shapiro, "One People One Destiny: Centralisation and Conflicts of Interest in Australian Federalism", in David E. Wildasin (ed.), *Fiscal Aspects of Evolving Federations* (London: Cambridge University Press, 1999), pp. 207-209.

²⁹³ Samuel G. Egwu, *Ethnicity, Economic Crisis and National Development: An Investigation on the Social, Economic and Political Crisis in Nigeria* (Dakar: Anthony Rowe, (Cordesria), 1993), pp. 58-59.

the littoral states, the other twenty two states against the federal government and littoral states with utter disregard for party lines and North-South dichotomy. Revenue allocation had been a determining factor in the shifting boundaries of allegiance.

On a final note these challenges would remain intractable and reforms impossible until the political elite and general citizenry internalize the culture of 'give and take' and also learn to organize their activities within the ambit of the laws of the land. This done , it should then be possible to develop a Nigerian federation as one of equal rights and opportunities which is also run in consonance with our culture and diversities and keeping with our aspiration for accelerated development and a harmonious society.