

ECONOMIC REVITALISATION THROUGH CONSTITUTIONAL STRENGTHENING OF FISCAL FEDERALISM IN NIGERIA.

Shafiu Umar,

Abstract

Federalism is a system of government where by governmental powers are shared between the central government and component units. Fiscal federalism represents the constitutional division of revenue and economic control among levels of government. It also mirrors the amount of fiscal autonomy and responsibility accorded to sub-national government/states/local governments. This article, therefore, examines fiscal federalism under the Constitution of the Federal Republic of Nigeria 1999 and how its improvement and implementation would contribute in solving most of the economic and security challenges bedeviling the country. The paper revealed that Nigeria has not operated as a true federation since it adopted a federal constitution. Fiscal responsibility and taxing powers still remain considerably, centralized. The practice of fiscal federalism in Nigeria has been inhibited by several factors which include the dominance of the federal government in the revenue sharing and over-reliance on the revenue from the Federation Account. The article recommends that there is the need to amend the constitution to accord fiscal autonomy to component units for economic growth and peaceful co-existence.

Key Words: Fiscal federalism, Constitution and Resource control.

1.0 Introduction

Federalism is a system of government whereby powers are divided between central component units. Fiscal federalism connotes refers to sharing of revenue generated from national resources between the central government and component units. It also allows each tier of government to have control over resources generated within its territory. Fiscal federalism is essentially about allocation of government resources and spending by the various tiers of government.¹ Nigeria is said to be operating federalism where powers are shared between federal government as central government alongside states and local governments. However, federalism in Nigeria is surrounded by a lot of criticisms that the country is not operating true federal system of government. Fiscal federalism is not obtainable as states and local governments do not have absolute control over natural resources in their domain. This resulted in clamoring for restructuring mostly from the southern part of the country to the extent of threatening security and national unity of the country.² This article examines the concept of fiscal federalism in Nigeria and how its true implementation under the constitution will bring solution to nation's economic and security challenges. The doctrinal method was adopted in carrying out this research work where text books, journal articles, periodicals and related materials were adequately consulted.

2.0 Definition of Fiscal Federalism

The term fiscal federalism itself is mooted in a political arrangement called *federalism*. It is therefore imperative to start with an explanation of the concept of federalism.

Where a highly acclaimed father of federalism describes federalism as the method of according power so that general and regional government are each within a sphere, coordinate and independent federalism, which implies the existence in one country of more than one level of government, each with different expenditure, responsibilities and taxing power.

* **Shafiu Umar**, LL.B, B.L, LL.M- Department of Public and Private Law Yusuf bala usman college of education and legal Studies, Daura, Katsina State shafeeukarfi@gmail.com 07062249124

¹EWETAN.O.O.(2012), "Fiscal federalism in Nigeria: Theory and practice", International journal of development and sustainability Vo.1No. 3, P.1076.

¹EWETAN.O.O.(2012), "Fiscal federalism in Nigeria: Theory and practice", International journal of development and sustainability Vo.1No. 3, P.1076.

²Ibid at P. 1077.

Sagay,³ defines federalism as “an arrangement whereby powers within a multinational countries are shared between a federal government and component units in such a way that each unit including the central authority exist as a government separately and independent from others, separating directly on persons and prosperities with its territorial area and with a will of its own as apparatus for the conduct of affairs and with authority in some matters exclusive of others”.

In the light of the foregoing, fiscal federalism refers to the financial relationships among existing tiers of government. In another type of political structure, it is known as inter government fiscal relations.⁴ It also covers the principles and formula of sharing the centrally collected revenues among the individual states and local governments. This system is what is generally referred to as revenue allocation which is a mechanism used to address the fiscal imbalance which emerges in the process of economic development.

3.0 The Nature of Nigeria's Federalism

Under the 1999 Constitution, Nigeria is a federation consisting of 36 and a Federal Capital Territory.⁵ The federal arrangement in Nigeria under the constitution is premised on a distinctive division of powers of the federation between the central and the states governments. This involves the sharing of powers between the federal government and the states governments to foster easy administrations, cooperation and promote the principles of separation of power. It therefore, appears that the basic goal of federalism in Nigeria is to promote the unity of the country while creating space for political autonomy of the different sections of Nigeria. This goal however, has not been realized as most of these states are incapable of standing for themselves financially.

The existence of different levels of government therefore, demands that power is shared among them to prevent one level from encroaching on the powers of the others thereby checking undue excess.⁶ Under the 1999 Constitution, powers are classified as exclusive and concurrent legislative powers.⁷ The exclusive legislative list has 68 items while the concurrent legislative list has 12 items.⁸ The authority to legislate on the exclusive legislative list is vested in the federal government and the state may only legislate on the items specified in the list to the extent expressly authorized by the federal law. It is however observed that the exclusive legislative list is numerous and contained matters that should ordinarily be placed under the jurisdiction of the component units. Example of these items is land. Land is under the exclusive legislative list even though by virtue of Land Use Act,⁹ land is vested on the state government. Others include drugs and poison, fishing labour mines, police, taxation, marriages, education etc could be conveniently be managed by the state being matters of local concern. The federal and states governments both have powers to legislate on matters specified in the concurrent list, however, if any law made by the House of Assembly of a state is inconsistent with any law made by the National Assembly, the law made by the National Assembly shall prevail and that other law made by the State shall be void to the extent of its inconsistency with the federal law.¹⁰

³Itse, S., (2008), *"How a true Federal System should run"* vintage press ltd, at P. 87.

⁴Adoyi, W.O. and Okoko, O.F.(2014) *"fiscal Federalism In Nigeria: an analysis of Issues and challenges"*. International journal of peace and conflicts P.I

⁵Section 2(1) CFRN 1999

⁶Elazar, D.J (2016). A Critical Appraisal of the Federal Features of the Nigerian Constitution. Ebonyi State university Law Journal 7(2) p.122.

⁷Nwabuexe, B. (1983) *Federalism in Nigeria*. Sweet and Maxwell, London.p.6

⁸Amah, E.I. (2016). *Federalism, Democracy and Constitutionalism; The Nigerian Experience*. Journal of Law, Policy and Globalization. Vol.53 p.1.

⁹Section 1 Land Use Act 1978 Cap. L5 LFN 2010.

¹⁰Section 4(5) CFRN 1999

It should be noted further that the fourth schedule of the constitution provides lists of functions of the local government councils in Nigeria, that is, the third tier of government in Nigerian federal arrangement. However, it did not expressly or impliedly confer any legislative functions on the local government councils.¹¹ The councils are therefore an appendage of the state governments and it is within the powers of the houses of assembly to make law regulating these councils.

From the various definitions, it could be concluded that in any true federalism, the regions or states have the constitutional right to control their resources without much interference from the central government. It should however, be noted that all federal systems do not exhibit similar characteristics as each contrary's system is determined by its socio-cultural disposition¹². Nigeria Federalism like many others, is a society with a plurality of ethnic groups with different historical, cultural and linguistic backgrounds, but in which each ethnic group occupies a marked and distinct geographical location from the others. Federalism is a willingness on the part of the people of heterogeneous backgrounds to unite and form for themselves a central government, but there is usually those areas where the federating units will not compromise to the centre which in most cases include primordial ties, in that wise the people will not have loyalty to both the centre and the subordinating unit and even the existence of a federal constitution cannot put an end to this vagaries of federalism.¹³

The situation in the Niger Delta region of Nigeria does not place Nigeria among nations operating a federal system of government. In an ideal federation, as we have in the United State of America, Canada and Switzerland where the states are semi-autonomous, virtually independent of the centre. The states have control of the resources found in their areas, but pay royalty to the central government. Such areas as defense, foreign affairs and customs among others are controlled by the government at the centre.

The protagonists of resource control began to push forward the argument that the country cannot be said to be a federation when the elements of federalism are lacking, elements such as state police, control of natural resources by the federating units etc. Although Nigeria is supposed to be a federation, nothing in its structure and administration lends credence to this claim. Ekpo asserts that the only semblance of a federation in Nigeria is the 36 states; otherwise the country is to all intents and purposes a unitary state. The government at the centre is stronger than the states, with the latter depending on allocations from the former for survival.¹⁴

‘The protagonists of true federalism argue that if the regions of the first republic had control of the agricultural products produced in their areas, and got as high as 50 percent derivation from whatever accrued to the federation account as revenue, why then should the case be different when it comes to the Niger Delta region. The people of the Niger Delta find it inexplicable and therefore unacceptable that along the line, the practice of resource control was jettisoned, while derivation was drastically reduced. Experts see true federalism as not only synonymous to resource control but also as a concept that encourages and promotes peace and the development of other natural resources.

The attainment of true federalism would not only introduce the principle of resource control but aim to encourage early development of other natural resources of local and international relevance in Nigeria. It would empower states to make inputs into how natural resources found in their areas should be exploited and how revenue accruing there from should be shared. What this means is that the Niger Delta states would not be the only beneficiaries of the principle of resource control. All the states are potential beneficiaries, since there is no state that is not blessed with a natural resource.

¹¹Op cit note 43

¹²Lawan, A. “Federal setting of Nigeria” : Constitutionalism and Democracy in Nigeria. Proceedings of Northern Nigeria Regional conference on constitutionalism and democracy in Nigeria, May, 2000.

¹³*Ibid*

¹⁴www.ljhssnet.com last visited 03/03/2017

4.0 Fiscal Federalism under the Constitution of the Federal Republic of Nigeria, 1999

Nigeria fiscal federalism is anchored on economic, political, constitutional, social and cultural development. As Nigeria progress from a unitary to a federal type of government, the forms of government become more and more decentralization. There were changes in physical arrangement. The Nigeria Federalism is not a product of voluntary willingness on the part of the hitherto independent different ethno-cultural entities grouped together now as Nigeria, instead, it is the handwork of the colonial masters, i.e it is not Nigerians that decided on their own to set themselves a Central Federal Government with superior authority and sub-units retaking some level of authority. However this does not show that these erstwhile ethnic groups never interacted with one another¹⁵.

In Nigeria, the foundation of a federal system of administration was properly laid when the three regions (North, East and West) were granted some level of autonomy by the 1946 Richards Constitution¹⁶. On getting close to independence, it was deemed fit to devolve more powers to the regions with some level of autonomy by 1951 Constitution and this continued up to independence in 1960.

By January 1966 when the unmilitary first struck, the strong regional power was to be broken by Decree No. 34 of 1966 returning the federal system to a unitary by making the regions autonomy to be taken away.¹⁷ Several commissions were created to renew existing fiscal arrangement and make appropriate recommendations these were¹⁸. The Constitution of the Federal Republic of Nigeria 1999 as provided in *Section 162* in relation to sharing formula states as follows:

1. The federation shall maintain a special account to be called “the federation Account” into which shall be paid all revenues collected by the government of the federation except the proceeds from personal income tax of the personnel of the armed forces of the federation, the Nigeria Police Force, the ministry or department charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.
2. The president upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission shall table before the National Assembly proposal for revenue allocation from the federation Account and in determining the formula, the National Assembly shall take into account the allocation principles especially those of population, equality of states, internal revenue generation, land mass, 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 percent of the revenue accruing to the Federation Account directly from any natural resources.
3. Any amount standing to the credit of the Federation account shall be distributed among, the Federal and States Governments and the Local Councils in each state on such terms and manner as may be prescribed by the National Assembly.

The legal basis of fiscal federalism as derived from the past constitutional arrangement and hence in any true federalism, the fiscal powers of all tiers of government must be related to the functions and responsibilities assigned to them by the constitution. This is how it should be in a true federal system and these ingredients of federalism were practiced and administered by our founding fathers i.e Dr Nnamdi Azikwe, the Sardauna of Sokoto, Sir Ahmadu Bello and Chief Obafemi Awolowo until the military insurgence.¹⁹

¹⁵Lawan, A. “Federal setting of Nigeria” : Constitutionalism and Democracy in Nigeria. Proceedings of Northern Nigeria Regional conference on constitutionalism and democracy in Nigeria, May, 2000.

¹⁶Ibid

¹⁷Lawan, A. “Federal setting of Nigeria” : Constitutionalism and Democracy in Nigeria. Proceedings of Northern Nigeria Regional conference on constitutionalism and democracy in Nigeria, May, 2000.

¹⁸Ibid at 23

¹⁹Akindele, O.R. (Supra) at P.217

The three regions even though they were component were free to develop themselves at their own pace. For instance, the western region under Chief O. Awolowo and Northern region under Sardauna both had more resources at their disposal because 50% of the revenue generated in their region was made available to them which was later entrenched in 1960 and 1963 constitutions.

Today because of the development carried out by Chief O. Awolowo with the resources available from cocoa funds, which he judiciously used for the benefit of his people including the introduction of the free primary education in 1956, the south western Nigeria as it is today remained the most sophisticated, most educated and economically more developed of all the six geo political zones in the country.²⁰

The establishment of the federal system in Nigeria was based on round of constitutional conference in England prior to the grant of independence by the British government. The importance of this constitutional arrangement was to ensure the statutory fiscal function and the financial resources to be applied for the effective performance of these function by each tier of government which was explicitly stated under the constitution.²¹ Unfortunately, the statutory shares of states and local government were reduced through the ad-hoc fiscal measures such as the stabilization fund, dedication of crude petroleum or exchange on special federal project etc.

These are supplementary by transfers from the central or federal government. In most cases a revenue sharing formula is adopted for determining how much of the federally collectible revenue goes to, each level of government. The proportion of what goes to the lower tiers of government depends largely on the system or structure of governance, availability of revenue base and ability to generate revenue internally.

In Nigeria, study has shown that states and local governments rely mainly on allocation from federal government. The allocations from federal government usually constitute 70 to 90 percent of the state or local government revenues. The high level of intervention of the federal government through national financial policies increases the power of federal government and invariably made the federating unit subordinate.

5.0 Challenges of Fiscal Federalism

Fiscal federalism from the very beginning raised several fundamental issues. The assignment of responsibilities among federating units in Nigeria has also created problems.

First, there was the question of how each level of government would be given adequate fiscal power to enable it maximize its revenue and discharge its constitutional duties and still its fiscal autonomy.

Secondly there were problems of allocating the centrally collected revenue equitable among all the level of government. Various principles had been tried by different fiscal commission and so far, they are yet to be fully acceptable for sharing revenue.

Thirdly, fiscal federalism had been encumbered by non-jurisdiction problem such as imbalance in population, size of land area, resources endowments and levels of development. Consequently, there has been a growing gap between and the requirements of individual state and local government and the revenue they are able to raise on their own. This sharp difference between the very rich and the very poor levels of government tended to influence the principle applied in favour of poorer states and sometimes at the expense of the richer ones.

²⁰ Akindele, O.R. (Supra) at P. 217

²¹ 1999 Constitution of the Federal Republic of Nigeria (as amended)

Furthermore, the creation of states and local government by the military government was to produce balance federalism the emergence and proliferation of states and local government have continued to pose new problems for inter government fiscal relation. Although, a major objective of the military in creating states was to reduce the political power of the region and play down region/ethnic politics that was trading the new federal structure Unfortunately, it also saw it as opportunity to use its military might to assert the “supremacy” of federal government fiscal power over the states.

Over - dependence on oil revenue has impacted and posed serious challenges to the issues of fiscal federalism in the country. The present allocation of function is based on the 1999 constitution which divided governmental function into three categories of powers.

The different formula that have been used for revenue allocation have consistently increased the financial power of the federal government against the other levels of government.

Lastly, the horizontal distribution principles have remained contentions and have been described as unfair by some political zones, the emphasis on population is the most important issue resulting from complaints that population figures were manipulated in favour of some states.

6.0 Conclusion

Nigeria's fiscal system has been characterized by misplaced expenditure priorities inequitable appropriation of the nation's revenue and excessive fiscal centralization. The federal government receives larger amount in the sharing formula and with little impact on the people.

A number of factors have inhibited the practice of fiscal federalism on Nigeria. These include the dominance of the power of the central government in revenue share from the federation account, the centralist system of fiscal relations; critical issues of over dependence on oil revenue, conflict over sharing principles and disharmonious federal state relations.

The essence of true federalism is to allow each state or region in a federation a significant measure of autonomy to manage its affairs. The federalist debate in Nigeria centres essentially on the need to understand the basis of the contract of true federalism and resource control, this debate is longstanding, passionate and inconclusive. Despite the contrived arrangement as articulated' by the ruling class, the systematic dysfunction has resulted in a series of violent, dramatic and traumatic inter-ethno regional confrontation, ventilating the essence of the debate. Indeed, the most spectacular and deliberate expression of the centrality of the contention is the current unprecedented demand of the Niger Delta states for resource control. Political observers, especially those from the Niger Delta region argued that the agitation for resource control is litmus test for the enthronement of true federalism. What made the regions strong economically in the first republic was their financial independence. Each region took care of itself and its needs within the limits of its internal revenue resources. What the regions received from the federal government through the principles of fiscal federalism which obliged the state to provide such assistance, was minimal.

Contrary to the opinion from certain quarters, that resource control would benefit only the oil producing states, it will clearly benefit all states of the federation. After all, the six geo-political zones in the country are endowed with abundant natural resources waiting to be explored and exploited. We must recognize the position of the Niger Delta on this issue as a vital contribution to the resurrection of true federalism in Nigeria. All the 36 states will benefit from this, as they will also exercise exclusive jurisdiction over the natural resources in their respective territories. That crude oil production has been by far the most important activity in the Nigerian economy since the early 1970's is not subject to debate, its impact is not limited to its contributing approximately 91 percent of Nigeria's total foreign exchange earnings but also to the fact the budgets are predicated on the expected annual production and price of crude oil. That being the case, fiscal federalism under the Nigerian Constitution does not reflect the true federal system of government hence the need to amend the Constitution to allow states have control over resources found in their territory. In addition, the little resources given to the federating units are not effectively utilized by the governments.

7.0 Findings

From the discussion in the article, the following findings were made;

1. The Nigerian federalism is characterized with unitary system which made the states to depend squarely on the central government economically through federal allocation.
2. Nigerian Constitution has vested so much power to on the federal government while the states were made subordinate to the federal government including fiscal power through the Exclusive Legislative List.
3. The derivation formula of 13% provided by the Constitution is inadequate for states with natural resources.
4. Derivation funds accruing to the oil/natural resources producing states are not effectively utilized by the government of the states. This resulted in persistent agitation by the citizens of the states for resource control since they are not seeing the impact of the resources derived from the federation account. This has serious adverse effect on the nation's security and by extension draws back the economy of the nation.
5. Most of the legal frameworks regulating distribution of national resources have been in place for quite period of time without considering rapid development and changes experienced across the country.
6. There has been persistent call for amendment of the Constitution of the Federal Republic of Nigeria, 1999 to review and increase the sharing formula of not less than 13%.
7. Nigerians especially those from oil producing states were not adequately enlightened on the need to embrace dialogue and diplomacy instead of violence in expressing their grievance over resource control in their resources.

8.0 Recommendations

Nigeria cannot be a strong arid united federation unless and until the constituent parts (states) are sufficiently empowered by enabling practices that conform to the principles of federalism. It is the recommendations of this study that:

1. All traces of unitary system of government should be removed from Nigeria's form of federalism and allow the states the degree of freedom and autonomy consistent with federalism.
2. A major constitutional reform should be in place to make the states autonomous and independent to a reasonable extent,
3. The derivation formula should be increased substantially from 13% to about 25% for the oil producing/natural resources states, and the derivation principle should be extended to other resources including solid minerals and agricultural resources. Alternatively, the states to have absolute control of the resources and be paying royalty to the federal government.
4. The Federal Government should tie the derivation fund that accrue to the oil producing states from the federation account to specific development projects in the oil producing communities to prevent the local ruling elites from diverting or misappropriating the funds they are currently doing. This will enable the oil producing communities to benefit directly from revenue allocation.
6. The Federal Government should identify and repeal all legislations facilitating the economic oppression and political repression of the Niger Delta region as well as region/states with natural resources and even those without.
7. There is need for review of the revenue allocation formula in order to increase the share of the federating units (States) to facilitate the discharge of the additional responsibilities devolved to them or alternatively the states should be given total control of their resources.
8. However, cogent as the demand for resource control may be those agitating for it should continue to use dialogue, diplomacy and superior argument instead of violence to ask for their rights. The agreement and the understanding reached by the founding fathers of the Nigerian nation should not be undermined.