REVISITING REVENUE ALLOCATION FORMULA IN NIGERIA: A PANACEA FOR TRUE FEDERALISM AND DEMOCRATIZATION*

Abstract
Revenue Allocation Formula is a household name that has occupied centre stage of the nation's socio-political history prior to independence. Since 1958, when Nigeria exported her first oil products, oil has been ceaselessly flowing on the land. From 1970's to 80's and 90's the nation has been growing infrastructurally. Lagos and Abuja were built with oil money. New states were recreated with Gulf War oil sales, but the goose that laid the golden eggs were not having a good share. Thus, the Nigerian Federation turned to a theatre of conflicts over the sharing of oil money among the component units that make up the country. This led to controversies and agitations. The military entered the stage and could do no better. The appointment of commissions of inquiry could not help much, as their reports were jettisoned with Decrees. The 1995 confab recommendation which found its way into the 1999 constitution introduced the 13% derivation formula which holds till today. The objective of this work is to applaud the Federal Government decision to revisit this hydra-headed monster that has kept the country in a quagmire, and to proffer recommendations on the importance of an acceptable revenue formula for a socio-economic peace. The adoption of primary and secondary source methodology was to enable the writer apply textbook writers opinion to critically analyze the concept and advise of Mr. President and the stakeholders on the necessity of the review as a panacea for true federalism and full blown democracy.

Keywords: Revisiting, Revenue, Allocation Formula, Federalism, Agitation, Democracy.

1. Introduction

This paper is meant to discuss the advantages and the need for a review of the current revenue allocation formula in Nigeria. The need for an upward review of the current revenue formula in Nigeria has been a subject of controversy and discourse in print and electronic media and academic debate for so many years. It has formed the basis on a tripod upon which the agitations for resource control in the Niger Delta State of Nigeria are based. Akpo Mudiaga Odje wrote that the twin issues of federalism and resource control have long been the focus of this entire nation Nigeria, even before our political independence in 1960. The pre-independence conferences of 1957 and 1958 held in London were orchestrated amongst other things by these twin concepts of true federalism and resource control. Also, the Constitution of 1960, built itself upon and dwelt on the quasi-federal structures of the Macpherson Constitution of 1951 as well as those of the Littleton Constitution of 1954. Based on this development, the independence Constitution of 1960 and the Republican Constitution of 1963 incorporated some fundamental principles of true federalism as well as elements of resource control and a high percentage of derivation for the regions. The researcher advises all stakeholders to assist the federal government to give the issue of revisiting and reviewing the revenue formula the support and the urgency it deserved because of its obvious implication and advantages on our federalism and democratization.

2. The Origin of the Principle of Derivation

The writer is of the opinion that the best Constitution Nigeria ever had is the 1960 and 1963 constitutions. These two Constitutions specifically are the 1960 Independence Constitutions and the 1963 Republican Constitution. These constitutions never introduced any dichotomy in onshore and offshore oil revenue for the purpose of derivation. Then, the regions and much later, the states were entitled to 50 percent mineral derivation from both onshore and offshore revenue. The 1960 constitution vividly provided that:

1. There shall be paid by the Federation to the Region a sum equal to fifty percent of:
   (a)The proceeds of any royalty received by the federation in respect of any minerals extracted in that region, and
   (b) Any mining rents derived by the federation during that year from within that region.
2. The federation shall credit to the distributable pool account a sum equal to thirty percent of:
   (a) The proceeds of any royalty received by the federation in respect of minerals extracted in any region; and
   (b) Any mining rents derived by the federation from within any region.

In this section "minerals" include mineral oil;[1]it is important to state that one of the highlights of the 1960 Constitution is contained in subsection (6) thereof which states accordingly;

> For the purpose of this section the continental shelf of a Region shall be deemed to be part of that region.

***By Austine K. MGBOLU, PhD, B.L,** Senior Lecturer, Faculty of Law, Ebonyi State University. Email: mgboluaustine@gmail.com. Tel: 08037155942; and
***Vivian Chioma ITESHI, PhD, BL,** Lecturer, Faculty of Law, Ebonyi State University, Abakaliki

Flowing from the above, it is therefore crystal-clear that the Regions/States were hitherto entitled to benefit for the purpose of 50 percent derivation from the continental shelf contiguous to the state. Similarly, under subsections of same constitution, that such regions or states are also entitled to participate in the sharing of the 30 percent of the proceeds from the common pool after collecting their originally allowed 50 percent allowed by the constitution and the Federal Government by virtue of the constitution was exclusively entitled to only 20 percent of the proceeds derivable from the regions from mineral resources.

3. The Meaning of Derivation and Revenue Allocation

It is germane at this stage to entertain the reader with the meaning of derivation and derivable revenue from oil resources. Revenue allocation or derivation essentially relates to how to allocate or share or apportion actual or prospective revenue to the various levels or units of government so that each decision making unit will have adequate financial resources to perform the constitutional functions assigned to it,*simpliciter.* The New International Webster's Comprehensive Dictionary, described derivation to mean, the art of deriving or the condition of being derived. It thus appears to mean that the term derivation is an acronym used by Nigeria to share the proceeds of oil revenue between the federal government and the oil producing regions or states, in other words called, the littoral states of the federation in line with the 1960 and 1963 constitutions. The issue of derivation formula or revenue allocation formula by its nature in Nigeria is a continuous and dynamic adventure and some of the critical issues and questions associated with revenue sharing in a federation like Nigeria cannot be resolved once and for all. Therefore, the search for an acceptable derivation formula continues unabated in Nigeria. It is indicative that the two words, Derivation and Revenue Allocation can be used interchangeably, since they are synonymous and symbiotic. Revenue allocation in general context refers to the disposition of fiscal responsibilities among tiers of government. In a narrower sense, it is the transfer of financial resources from one level of government to another, which arises mainly because of the revenue advantages, which the former has over the latter. For example, over fifty-years of Nigeria's independence, the nation is still searching for an enduring and acceptable derivation formula.

In the past, various principles have been tried vide numerous *ad hoc*. Revenue Allocation Commissions set up by the Federal Government of Nigeria but all except one seem to have yielded the much required result; as the contemporary situation in the country by then indicated. The drop in the revenue allocation formula between 1954, 1960, 1963 and 1979 is traumatic, political and unfortunate to the image of Nigeria in the diaspora. Unfortunately, the good recommendations of Sir Louis Chicks Commissions which was adopted by the 1954 constitutions of Nigeria and which provided the regions and the centre with adequate measure of fiscal autonomy within their own sphere of government, and that total revenue available to Nigeria should be allocated in a way that the principle is followed to the fullest degree and that is compatible with meeting the reasonable needs of the entire and each of the regions, was kept aside from being implemented. What held sway till date was the 13 percent derivation recommended by the 1995 Constitutional Conference in Nigeria, which was of course adopted by the 1999 Constitution of Nigeria (as amended). Another good shot at the derivation formula was fired by the 2014 National Conference under President Goodluck Jonathan. The conference's nationally accepted recommendation for an upward review of the derivation formula was also wished away by President Goodluck Jonathan for reasons best known to him. We welcome the pronouncement of the incumbent president Muhammadu Buhari to treat the issue with dispatch and give it the required and long awaited solution, though this has not been done by the administration of Muhammadu Buhari as promised.

4. Recurring Crises over Revenue Allocation

The genesis of derivation in Nigeria is rooted in the heterogeneous structure of the Nigerian nation and hinges on oil revenue and directly too stemmed from the deprivationist policies of the Nigerian state as a result of the British "*gunboat*" diplomacy and the signing of "protection treaties with illiterate chiefs and kings, following the Berlin Conference of 1885, where Europe sat and partitioned Africa into spheres of influence. The principle of deprivation actually blossomed in 1954. It was adopted as a recommendation by Sir Louis Chicks Commission of 1953 into the 1954 constitutions because of its provision to the regions and the centre an adequate measure of fiscal autonomy. The good gesture of the 1954 constitution was adopted by the Independence Constitution of 1960, which allowed one hundred percent derivation to the regions. Unfortunately, the Republican Constitution of Nigeria reduced it to fifty percent. Added to this development, the principles of federalism suffered severe blows in the periods of; 1966-1979, 1983-1985, 1985[2], 1993-1998[3]and 1998-1999. Accordingly, Yakubu Gowon's post-civil war policy of rehabilitation, reconstruction and reconciliation; the (3RS) and the need to raise funds to face the projects and execute them squarely caused his administration to bring the derivation formula to forty-five percent. In a quick follow up, the Gowon's Administration in line with the avowed tactics set up a Commission of Inquiry to play politics with the issue at stake, derivation formula. Expectedly, the Commission's recommendation

[2] August 27, 1985-August 26th 1993 (The Military Administration of Gen. Ibrahim Babangida).

[3] November 17th 1993-29the May 1999 (The Military Administration of Gen. Sani Abacha).

was quickly rejected by his administration.[4]The resultant effect was a transformation of the federalized system to a quasi-unitary system with all the features of unitarism. As a result of this, various minority ethnic groups began to press for a fair deal in the allocation of natural resources which flow from their soil and of which they were endowed. On their part, the military junta's put up a recalcitrant posture, neglected the rule of law, fair hearing, human right principles and state objective principles and economic objectives as contained under S. 20 of the Constitution,[5] and used coercive apparatuses of the state to effectively contain the minorities and in the process destroyed lives and properties.[6]

After Yakubu Gowon, following the assassination of Gen. Muritala Muhammed; the Obasanjo administration which took over met a playing clean ground to further reduce the derivation formula from forty five percent to twenty five percent. After that regime, the Shagari administration removed twenty-percent from the twenty five percent leaving only five percent for the littoral states. It was the incumbent President Buhari who promised to revisit the issue recently who, during his first regime, slashed down the derivation formula by removing 3.5 percent, from the five percent leaving only 1.5 percent from the original one hundred percent derivation formula. As God will have it, the incoming administration of General Badamasi Babangida whose wisdom was brought to bear to douse the already aggravated tension exacerbated by the brewing danger of war of marginalization following the orchestrated charade by the former regimes to reduce revenue derivation with brazenness. He acted fast an introduced an increase of three percent and the creation of OMPADEC as a development intervention. He also moved on to abolish the obnoxious dichotomy between onshore and offshore oil proceeds. Finally, it was the National conference that was set up by the Abacha administration, despite the hatred of the administration by the populace over the brutal killing of the 'Ogoni-nine' that managed to introduce the thirteen percent derivation formula. Same Abacha formula is still prevalent till today as it also succeeded in finding its way into the 1999 constitution of Nigeria, as amended.

Today, Nigerians both at home and in the diaspora are watching. They are waiting for that day when the President, Muhammadu Buhari would redeem his words of revisiting the revenue formula for an upward review or at least to revise the existing formula in tandem with the law,[7] and in tune with the fiscal policy of the then British Colonial Administration in Nigeria to fashion out an equitable resource revenue allocation formula that would promote rural development. We believe, any effort, strategy, increase or revision or principle introduced by the Buhari administration in the process will go a long way to correcting the mistakes of the past and help to resolve the perennial bloodshed, insurgency and the spate of agitations in the Niger Delta of Nigeria.[8]

5. National Commissions of Inquiry on Revenue Allocation

We have already mentioned that the founding father s of Nigeria meant well when they raised up or put in place, National Commissions of Inquiry to fashion out acceptable formula for revenue allocation. The report of some of the commissions did not see the light of the day while some other reports where jettisoned by successive governments. We therefore give the reports of those that made relevant imprints on the revenue formula.

(a) Hick Phillipson Commission of Inquiry on Revenue Allocation
(b) Professor I.K. Hicks and Sidney Phillipson Commission 1954
(c) Sir Louis Chicks Commission, 1953
(d) Sir Jeremy Raisman Commission, 1958
(e) Binn's Commission, 1964.

As a result of the deficiencies, lacuna and the imbalance noticed in the report of the above mentioned Commissions of Inquiry, the Federal Government set aside their reports mainly because of the 50/50 share to the regions and the emphasis on the payment of 50% of accrued revenue to the area where the mineral existed. Governments resolve to the reports became, unfavourable to the people of the Niger Delta even though it was operational till 1970, when Gowon's Administration re-adjusted it to enable it execute post war programmes.

Binn's Commission, 1964

The need for a new Nigerianised revenue sharing formula to prepare grounds for the Republican Constitution necessitated a review of the sharing formula. This paved way for another Commission of Inquiry,and Sir I.K. Binn

[4] Dina's Commission.
[5] Constitution of the Federal Republic of Nigeria, 1999, as amended.
[6]Odi massacre in Odi LGA in 1999 over resource control management. Also, in 2005, Odioma community in Nembe LGA bloodshed over non provision of social infrastructure and control of funds, to mentioned just a few.
[7] S.33 and S.315 Constitution of the Federal Republic of Nigeria, 1999.
[8] Section 315 of the Constitution of Nigeria (supra) mentioned in its subsection(2) that the appropriate authority may at any time by order make such modifications in the text of any existing laws as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of the constitution and we agree. Mr. President is such an appropriate authority as contained in S.315 (4) (a)(i).

was appointed a sole Commissioner to review the previous allocation formula for the country. One of the terms of reference was the need for a formula that will be in tandem with the provision of the new Constitution, 1963.

Report

The Binn'sCommission rejected the revenue sharing formula among the region's based on derivation principle and rather introduced the use of "Financial Comparatibility" as a concept to be used. Under the concept, regions are made to have 50% percent share on mining rent and royalties, the central government's share was brought down to 15% and the amount for distributable pool amount was increased to 35 percent. Also, under this concept, allocation of distributable pool account among the regions were then as follows:

(i)	Northern Region	-	42%
(ii)	Eastern Region	-	30%
(iii)	Western Region	-	20%
(iv)	Mid-West Region	-	8%

The above principle was determined by the cash position of each region, its tax effort and the standard of service as recorded by AmbilyEtekpe.[9] It was considered a hybrid of the, '*principle of need'* and *'even development',* when the then Military Head of State Yakubu Gowon (Rtd) created the twelve states in 1967. The writer finds out that in furtherance of the Binn's revenue formula, the Gowon's Administration promulgated the Constitution (Financial Provision) Decree[10] which retained the Binn's revenue formula, but the Distributable Pool Account was made to reflect the twelve states structure, the Northern States then received equal share from the percentage of that region, while the states within the Eastern and Western regions got uneven share from their respective regional percentages as stated in the Binn's Revenue Formula.

Dina's Interim Revenue Allocation Committee 1968

The Military in power was not satisfied with the continued agitation for a fair revenue allocation formula. To douse the tension already gathering momentum, it set up an Interim Revenue Allocation Committee handed by Dina, a diplomat in 1968. The committee in its findings changed the name, Distributable Pool Account to 'State Joint ACCOUNT', and its disbursement to be based on four principles which reduced the weight of derivation. The four principles are:

(i) Needs.
(ii) Minimum national standards.
(iii) Balanced Development.
(iv) Derivation.

Report

The Dina Committee recommended that royalties from on shore mining should be paid as follows:

(i) State of origin 10%
(ii) Federal government 10%
(iii) States Joint Account 70%
(iv) Special Grants Account 50%

A striking and recommendable feature of the commission report was its outright recommendation that on shore mining rents should be in payable in full to the states of origin.[11] As a fall out of this report, in 1970, the federal government promulgated the, "Constitution Distributable Pool Account" Decree.[12] This Decree provided for 60 percent state share of export duties instead of 100 percent, and reduced those of the regions to 50 percent duty on motor fuel and 50 percent for excise duty as against earlier 100 percent. The remaining percentages went to the Federal Government. The Federal Government also got additional 5 percent from the previous 50 percent share of states on mining rents and royalties, thereby actually leaving for the state only 45 percent on derivation. Under this arrangement Distributable Pool Account was shared, 50 percent on equality of states and 50 percent on population of each state. It was clear to notice that at this stage, the issue of derivation has been whittled down and no longer taken as a serious and important national issue. The decree was used to rob the state thereby attracting more revenue to the centre. The additional bogus funds made the Federal Government too powerful and the states weak. The bogus funds now attracted the Federal Government to look for a way of legalizing its bad intentions of robbing Peter to pay Paul. Thus, in 1971, the Federal Government decreed the transfer of rents and royalties of offshore petroleum mines from the states to itself, thus realizing much revenue.[13] This was the first time that dichotomy was introduced into the nation's chaquered history. The decree vested all offshore oil revenue and theownership of the territorial waters on the Federal Government.

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[9]Atekpe; Politics of Resource Allocation and Control (Havey Publication (Port Harcourt, 2007) p.22.
[10]Decree of May 1967.
[11]This is as contained under 134(1) and (6) of the 1960 Constitution of the Federal Republic of Nigeria.
[12]Decree No. 13 of 1970.
[13]In 1971, the then Head of State vented an act which had the tinge of political inexperience by repealing S.140(6) of the 1963 Constitution and enacted, the onshore/offshore Dichotomy Revenue Decree 1971.

Aboyade Technical Committee 1977
This committee was constituted in 1977 as part of the process of transition to civil rule under Gen. Olusegun Obasanjo (Rtd) when he was the Head of State. The Committee specified tax jurisdictions of the Federal, State and Local Governments where the local government for the first time was recognized as the third tier of government in revenue allocation. We observed was that it was this committee that nearly eliminated the principle of derivation to confirm the Chairman's attitude of majority tribe politics, principally because oil has become the main source of income.
Report
From the Committee report, there was no more reference to on-shore mining rents and royalties to the states. Indeed figures below confirmed by the Revenue Mobilization shows that even the percentage to states was so reduced that even the old Rivers State had little or nothing to be proud of, as the, "treasure base of the nation", and a major oil producing state in Nigeria. For example; the figure as follows show that[14];

Federal Government received	57%
State Government received	30%
Local Government received	10%
Special Account	3%
Total	**100%**

The abundant crude oil in the minority territories of the Niger Delta Regions has become a subject of envy, and that the majority ethnic groups has adopted every mean to ensure that the owners received very little benefits from percentages assigned to derivation in revenue allocation. Because of the lopsided nature of this report, it was not accepted by the Constituent Assembly which consequently rejected the report but inserted in section 272 of the Constitution[15] that revenue allocation formula enforced in the fiscal year 1979 should continue until a new system of revenue allocation was enacted into law by the National Assembly.

Pius Okigbo Commission of Inquiry 1979
Another Revenue Allocation Presidential Commission was put in place by former president Shehu Shagari on November 21, 1979. It was a eight member Commission headed by Chief Pius Okigbo.
Report
The Commission submitted its report and recommendations on June 30, 1980. The Chairman who incidentally is a stakeholder of majority politics used his powers to incorporate the position of the resource owners into the report. Because of the national outlook and importance of the allocation formula as regards, derivation, prominent politicians like Late Dr. Garick B. Leton from Ogoni in the Bayelsa State and Prof. Adedotn Phillips from Edo State argued vehemently for the reinstatement of the principle of derivation the challenged the weights assigned to factors used for distributing funds to states. In line with the Revenue Mobilization and Fiscal Commission (RMAFC) report in 1989, the Okigbo Commission used the provisions of the constitution for each tier of government as the basis of sharing revenue and adjusted the percentages as highlighted below, with little modifications as follows:

Revised Federation Account Allocations

Federal Government received	53%
State Government received	30%
Local Government received	10%
Special Account	3%
Total	**100%**

Sequel to Okigbo's Report, a bill on the Allocation of Revenue was drafted in same year and was presented to the National Assembly. The bill proposed an alternative distribution of Federation Account. The process of passing the bill into law generated heated debates in the two Houses of Assembly, and it took the effort of a joint committee of the two Houses to pass the bill and it was assented to by the President. The development did not see the light of the day as this Act of 1981 was set aside by the Supreme Court based on a suit instituted against the federal government by Prof. Ambrose Ali, the then Governor of the defunct Bendel State.[16]

The Constitutional Conference of 1994 and the Constitutional Conference of 1995
The Constitutional conference in 1994 was organized in Port Harcourt Rivers State between February (4-6) 1994. It was like a pre-constitutional conference workshop for the people of old Rivers State, i.e., now Rivers and Bayelsa) states to articulate the various positions of the minorities in the Niger Delta. It assisted in galvanizing and

[14]Reports of the National Revenue Mobilization and Fiscal Commission vol. II 1989.
[15]Section 272 of the Constitution of Nigeria, 1979.
[16]*Attorney General of Bendel State v. A.G. of the Federation & Ors*. (1982)3 NCLR. 1.

mobilizing public opinions and gave direction to the demand of the people of the Niger Delta. Supported by the Niger Delta Forum (NDF) whose members are eminent Nigerians, the conference made a remarkable impact to the entrenchment of the 13 percent derivation formula in the constitution of Nigeria.[17] The communiqué raised was forwarded by the chairman of the forum to the Federal Government, and it helped the delegates from the Niger Delta (South-South) states at the National Constitutional Conference of 1995 at it gave them a clear vision of what was expected of them. The 1994, Constitutional Conference actually prepared the delegates from the south-south for the 1995 National Conference, where the combined efforts of Peter Odili, Chief Okrika, DappaBiriye, Niger Delta Forum, delegates and opinion leaders from the region resulted in the entrenchment of 'not less than 13 percent derivation clause on principle of derivation in the 1995 Conference Report and by adoption found its way in the 1999 Constitution of Nigeria.[18]

6. The Onshore/Offshore Dichotomy

In 1971, the Federal Military Government decreed that section 140(6) of the Constitution of the Federation which provides that the continental shelf of a state shall be deemed to be part of the state is hereby repealed. The decree vests all offshore oil revenues and the ownership of the territorial waters and the continental shelf in the Federal Military Government. This is because an important fiscal problem facing the oil industry production by then, was the treatment of oil proceeds from the continental shelf, low water mark and the Exclusive Economic Zone of Nigeria. The Constitution of Nigeria 1999 (as amended) defines continental shelf of a region as part of that region for the purpose of mining royalties and rents, but the Raisman Fiscal Commission had recommended that the resources found within the area of the continental shelf should be within Federal Jurisdiction; but failed to make specific projections as to the share of revenue from oil within the continental shelf and the Nigerian leaders, under pressure from the East agreed to the inclusion of the continental shelf in the area of a region for the purpose of mineral and mineral oil exploitation. This is the genesis of the controversy on oil revenue and derivation today with respect to the seaward boundaries of a littoral state; and this is where Mr. President will have to look into in his bid to revisit the revenue allocation formula which turns out to be a hydra-headed issue that is yet to be solved. This writer is of the opinion that derivation formula is one of the most critical political issues in this country that is yet to be determined. This is because, if as observed in this research that the East could pressurize our colonial masters to include the continental shelf for the purpose of 50 percent derivation under the 1960 constitution, then it is a challenge facing Nigeria to enthrone social, political and economic peace in Nigeria by joining and encouraging the incumbent president to right the wrongs of the past and lay the issue of oil revenue derivation to rest setting a good example. Also, the continental shelf of Nigeria was applied in the offshore oil revenue (Registration Grants) Act.[19]This Act directs all offshore leases for the exploration of oil from the territorial waters and continental shelf of Nigeria to be registered in the littoral states contiguous to same. For the purpose of offshore oil lease registration, the territorial waters and continental shelf of Nigeria are deemed to be part of the littoral states, but for the 13 percent derivation, the territorial waters and continental shelf belong to the Federal Government of Nigeria.[20] Also, in the amendment to the Petroleum Act, it is understood that the Petroleum and Gas discovered 2000 nautical miles in the Exclusive Economic Zone of Nigeria belongs to the Federal Government of Nigeria. It is also on record that for the umpteenth tune as stated by AkpoMudiagaOdje,[21] the Babangida Administration Abolished the dichotomy by virtue of the Allocation of Revenue Federation Account (Amendment) Act[22] which is the current existing revenue formula or law under sections 313 and 315 of the 1999 Constitution of Nigeria (as amended). In fact, the onshore/offshore dichotomy had been abolished three times within 24 years, once in 1979 and two times in 1992.

Continuous Application of the Onshore/Offshore Dichoromy by President Olusegun Obasanjo

One therefore stands to wonder why after three times abolition of the onshore/offshore oil dichotomy by the Babangida Administration in 1979 and twice in 1992, the incoming president, Olusegun Obasanjo on assumption of office from January 2000 started applying the 13 percent derivation as contained by the section 162(2) of the 1999 constitution without the offshore proceeds, which he claimed belonged exclusively to the Federal Government. This development, threw the country into controversy, upheavals, agitations and insurgency. This led the Federal Government to institute an action against the littoral states in the Supreme Court in 2001.[23] The relief claimed by the Federal Government in the Supreme Court in paragraph 10 of its statement of claim dated 6th February 2001 is for:

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[17]S. 162(2) Constitution of the Federal Republic of Nigeria, 1999.

[18]*Ibid*.

[19]Cap. 336, Laws of the Federation, 1990, now (2010).

[20]Section 1(1) of the offshore Revenue Registration of Grants) Act Cap. 336 LFN 2010. See also, the Exclusive Economic Zone Act. Cap. 116, LFN, as amended by Act No. 42 of 1998.

[21]A.M. Odje, Oil, Niger Delta and Nigeria, Jenique Publishers, Warri, 1995) p. 76.

[22]Act No. 106 of 1992. See, also sections 4(A)(6) and 4(A)3.

[23]*A.G. Federation v. A.G. Abia State & 35 ors*. (2002)6 NWLR (pt. 764) 542.

> A declaration by the Honourable Court of the Seaward Boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from the state pursuant to the proviso to section 162(2) of the Constitution of the Federal Republic of Nigeria 1999, (as amended).

The Supreme Court from a certified true copy of its judgment delivered on 5th April 2002 in the suit held per Ogundare JSC delivering the leading judgment that:

> With this conclusion, I hold and determine that the seaward boundary of a littoral state within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that state pursuant to section 162(2) of the constitution of the Federal Republic of 1999 is the low-water mark of the land surface thereof,
> or (if the case so requires as in the Cross River State with an Archipelago of Islands) the seaward limits of inland, waters within the state. And this still be my judgment in respect of plaintiff's case.[24]

In line with the earlier warning of the elder statesman, AkpoMudiagaOdje in his book[25] as published in the Vanguard Newspaper[26] in 2002, and the Pointer newspaper,[27] also in 2002 titled: Onshore/Offshore Judgment: while, it is unenforceable in law: it thus appear that in the legal terrain, enforcement of the judgment may be unattainable because of the following reasons:

1. There is absence of identifiable boundaries, geographical co-ordinates, baselines and survey plans on the extent of a seaward boundary of a littoral state as published by MudiagaOdje.[28]
2. The committee appointed to enforce the judgment pointed out that at the time there is no municipal legislation defining low water mark for the purposes of calculating derivation fund on the basis of on-shore production of natural resources. The committee report toed the line of AkpoMudiaga in his book cited earlier.[29]

The committee finally advised the Federal Government to concede oil wells and fields that fall within 200-metres water marks or 12 nautical miles to the littoral states.

7. Conclusion

It is unfortunate that the Committee set up by the Federal Government to enforce the judgment could not do so, rather instead of producing a blueprint or a legal approach to enforce the judgment adopted what they called a scientific approach. It was very obvious that there was no clear evidence before the Supreme Court as to the actual boundary and locations of the littoral states looking at the statement of Ogundare JSC who read the lead judgment in the case.[30]

> I shall presently show that the seaward boundary of a littoral state as we are called upon to determine in this case, is a matter of law. What becomes factual, and on which evidence will be required to prove, is the actual location of that boundary. The latter situation is not the issue before us.

Since there was no evidence or fact upon which to enforce the judgment, the wise committee on its own understanding and agreement recommended a scientific approach to the issue and that formed their evidence as highlighted above. One may like to agree with the words of the learned Oputa JSC that the judgment is a mere declaratory statement,[31] where he defined a declaratory judgment as follows:

> A declaratory judgment is merely a judicial statement confirming or denying a legal right of the applicant. A declaratory judgment merely declares and goes no further in providing a consequential relief to the applicant, while consequential relief may be joined, the court still has the power to issue a pure declaration without any coercive direction for its enforcement.

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[24]The judgment has been reported as Attorney General of the Federation v. Attorney General of Abia State & 35 ors. No.2 (2002)6 NWLR (pt. 764) 542 at page 600 paras. F-H.
[25]A.M. Odje, *Oil, Niger Delta & Nigeria*, Jenique Publishers Warri, 1995) p. 78
[26]Vanguard Newspaper, 6the September 2002, p. 26
[27]*Pointer Newspaper*, 25th July 2002, pgs. 8,20 and 22.
[28]Ibid.
[29]Ibid.
[30]*A.G. Federation v. A.G. of Abia State & 35 ors* per Ogundare JSC at page 644, paras C-D.
[31]Oputa JSC of the Blessed Memory in a locus classicus case of *Western Steel Works v. Iron & Steel Workers* (1987)1 NWLR (pt. 49) 384 at 303 paras, C-D.

In the same vein, sagacious Nnaemeka Agu JSC in the case of *Oyeyemi v. Irenole Local Government*[32] stated vehemently that 'a declaratory judgment cannot be enforced…' The statement made by this erudite scholar shows that the derivation formula has not been settled. We therefore recommend that the President in trying to review the allocation formula should involve all those who are familiar with the historic foundation of Nigeria's federalism. This is because the question of an acceptable revenue allocation formula is a dicey issue that has disintegrative potentials on Nigeria's body politics which can tear our nascent democracy apart if not properly handled. We appreciate the recommendations of the various commission of inquiry set up in the past, but advise that some recommendations still live in the minds of Nigerians and cannot be wished away as they carry imprints for a solid unification of Nigeria. Also, the recommendation of the 2014 confab is also relevant as this will guide Mr. President in reviewing the revenue formula to avoid mistakes of the past. The 2014 National Confab ended on the 21st day of August 2014 with the following highlights as recommendations:

(i) Creation of 18 Additional States.
(ii) Modified Presidential System.
(iii) Bi-cameral Legislature.
(iv) Part time for Senators and Reps.
(v) Power Rotation.
(vi) Removal of Immunity Clauses for Crimes.
(vii) Independence Candidacy
(viii) Re-Introduction of Old National Anthem.
(ix) Revenue Allocation as follows:
  (i) Federal Government - 42.5%
  (ii) States - 35%
  (iii) LGS - 22.5%
(x) Federal Government to set up a committee on Resource Control.

Based on these, we recommend also that the President should look into paragraphs (ix) and (x) with utmost urgency applying the needs principle to give the allocation formula an acceptable national touch.

Finally, the President should put sentiments aside and recognize the fact that the Government has failed the nation in its plan to end gas flaring in Nigeria by 2004; and take bold steps like that of Late Musa Y'ardua who made some inputs to end the Niger Delta problem, at least by understanding that the clamour for an acceptable revenue formula and that of resource control is substantially a political agitation, and should not be used as a tool for vendetta. It is also a demonstration of the freedom of expression, and an advertisement of a constitutional right of freedom of speech as enshrined in S.39 of our Constitution which cannot be forestalled by any court of whatever jurisdiction in Nigeria. It may be interesting to state that blessed with abundant natural and human resources, Nigeria has so much promise and look poised to achieve greatness until oil export began in 1958 and brought with it too much easy money and the curse of the 'black gold'. With its huge oil and gas resources, Nigeria is one of the world's most blessed nations but paradoxically, it does not have much to show for it. Shamsudden Usman, Nigeria's Former Minister of Finance in a paper presented at the London School of Economics and Political Science speaks on how the country remained poor in spite of abundant resources and wealth and stated that Nigeria's oil wealth has not translated into meaningful development largely due to bad leadership and corruption. R.A. Mmadu, in his paper on Judicial Attitude to Environmental Litigation and access to Environmental Justice in Nigeria wrote that exploration activities have brought grave environmental problems to the Niger Delta Region, and that oil companies such as Texaco, Chevron, Elf, Eni and Shell are extracting oil and gas with corporate impunity resulting in catastrophic environmental degradations and gross human right violations. Pressure from civil society for reform in the oil sector to bring the operation of these companies in line with international benchmark are met with stiff opposition and collusion by states and the oil companies to sidetrack the existing laws. The result is non-enforcement as well as non-compliance with existing laws which benefit the companies involved. Whatever may be the reason for this unwillingness to enforce environmental laws which is connected to corruption; the regulatory lacunae has been exploited by most oil companies to degrade or continue the degradation of the Niger Delta environment with adverse consequences on the health and overall wellbeing of the indigenous people including their enjoyment of the right to a healthy environment. The people in their resolve to protect their environment have adopted various mechanisms ranging from militancy to dialogue, andopen confrontations with the companies operating in the area, to institution of court actions. In the search for justice, there have been frustrations and dashed hopes.

[32] (1993) 1 NWLR (pt. 270, 462 at page 479 paras C-D)