

## FISCAL FEDERALISM IN NIGERIA AND THE NEED FOR DECENTRALIZATION\*

### Abstract

*In Nigeria, lack of extant principles and features of fiscal federalism is no doubt the bane of development, growth and economic success in the country compared to other countries that practice federalism. The Constitution of the federal Republic of Nigeria 1999 (as amended) wielded so much revenue powers to the federal government of Nigeria with leaving the component units somewhat incapacitated. This is no doubt in variance with the tenets of fiscal federalism and decentralization. The absence of autonomy to the sub-nationals has negated the principle of partial self-government by the sub-nationals. The sub-nationals are therefore, handicapped and they cannot provide maximum degree of fiscal freedom and responsibility to their citizenry neither can they embark on meaningful economic development. This has adverse effects and consequences such as poor economic growth, unemployment, poor infrastructure and lack of stability. This article is of the view that the new order the world over is decentralization of power which entails a fiscal power that is not concentrated on a particular tier of government but should be constitutionally and fairly devolved to the tiers of government rather than wield so much power to the government at the center to the detriment of others. It is however, suggested among other things that the current sharing formula of the revenue accruing to the federal government account should be reviewed to the effect that the sub-nationals gets the lion shares. Again, that there should be a strong policy on diversification from the oil sector to agriculture and technology in Nigeria. Also, that each state of the federation should be allowed to control and manage the resources deposited in their domain and then pay royalties to the government at the center. A total adherence and implementation of the recommendations made would go a long way to salvaging the ugly fiscal situation in the country.*

**Keywords:** Nigeria, Fiscal Federalism, Distribution of Powers, Sharing Formula, decentralization.

### 1. Introduction

Government the world over is in need of money to enable it run the activities of governance and to carry out the basic needs of the people and to achieve such goals, such as the provision of basic infrastructure and amenities, security of lives and properties, education and the welfare of the people. A government would be grounded if it does not have money to carry out its constitutional roles. The 1999 Constitution of the Federal Republic of Nigeria (as amended) hereinafter called the 1999 Constitution, provides that there shall be a state based on the principles of democracy and social justice.<sup>1</sup> It further provides that sovereignty belongs to the people of Nigeria from whom government through the constitution derives all its powers and the welfare of the people shall be the primary purpose of government.<sup>2</sup> The said constitution equally provides that government shall direct its policy towards ensuring that there are equal and adequate education opportunities at all levels; government shall promote science and technology; eradicate illiteracy; provide free and compulsory universal education; free university education; free adult literacy program,<sup>3</sup> etc. Government, therefore, needs money to carry out the above responsibilities in order to meet the yearnings and aspirations of the people. Full fiscal autonomy is an arrangement whereby sub-national legislatures raise all of their own financial resources through their own taxes, charges, fees and loans, and they each pay for their own administrative costs and public services out of their own budgets. Therefore, robust funding arrangements that give state, provincial or regional authorities sufficient resources and sufficient autonomy in the allocation of those resources are necessary if decentralization of power is to be a reality.

### 2. The Scope of Fiscal Federalism

The word 'fiscal' could relate to financial matters.<sup>4</sup> It could equally entail public finances or taxation. At its most basic level, fiscal federalism attempt to define the division of governmental functions, and the financial relationship between different levels of government usually how federal or central governments fund state and local governments. Fiscal federalism may be likened to father (federal government) making money, then handing same over to mother (state government) to distribute as she sees fit based on the needs of the family (the people) to buy groceries, go to the doctor, market, school, feed and other daily needs of a family.<sup>5</sup> Fiscal

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<sup>1</sup>S. 14(1) CFRN 1999 (as Amended).

<sup>2</sup>Ibid.

<sup>3</sup>Chap. II CFRN 1999 (as Amended).

<sup>4</sup>B. A. Garner, *Black's Law Dictionary, 7<sup>th</sup>edn.* (USA: West Group 1999), 650.

<sup>5</sup>J. Maypole, 'Fiscal Federalism: Definition, Theory and Examples' <<https://study.com/academy/lesson/fiscal-federalism-definition-theory-examples.html>>, accessed 26 April 2021.

federalism also entails a system whereby the federating units own and manage their resources and revenues but make a contribution to the central government to fund federal responsibilities. This is the autonomy and control of the resources deposited in the domain of the sub-nationals thereby returning royalties to the central government.

The theory of fiscal federalism was originally developed by the German-born American economist, Richard Musgrave in 1959.<sup>6</sup> Musgrave argued that federal government systems have the ability to provide many of the balance and stability needed to overcome disruptive issues like uneven distribution of wealth and lack of widely available resources. He further stated that federal government should manage a nation's money from the top and give it to states, who can distribute it locally as needed. Fiscal policy involves a situation whereby the government uses its spending and taxing powers to have an impact on the economy through allocations. These allocations or payments may be assessed on the basis of population or by some other formulae, as specified in the constitution as agreed from time to time between the central (federal) government and the sub-nationals.<sup>7</sup> In Nigeria, fiscal federalism is aimed at ensuring a balanced federation, economic development and national unity.<sup>8</sup> So, the argument goes as to how has the country's fiscal system performed in this respect? To what extent can Nigeria's fiscal federalism be said to have achieved its objectives?<sup>9</sup> Fiscal federalism entails having an independent finance by the federal, state and local governments to carry out their governmental activities within the purview of the various governments.<sup>10</sup> The rationale behind this is that if the revenue and finances of the federation is centered on one tier of government that is no more federalism. Financial subordination makes an end of federalism no matter how carefully the legal forms may be preserved. Each of the component units and the federal government must therefore, be given power by the constitution to have access and to control its own financial resources, such as power to tax or borrow for the purpose of financing its own services, in order to meet the yearnings and aspirations of the people. Unfortunately, in some federations like Nigeria, the government at the center has almost all the powers at its disposal. The sub-nationals get a little from the center thereby hampering development within the component units and this has pushed so many people to the center in order to have a share of the national cake.

### 3. Revenue Allocation in Nigeria

Arrangements around the raising, sharing and spending of money are critically important, both politically and economically, for the functioning of federal systems. The truism that money matters, applies as much in federal systems as it does in life generally.<sup>11</sup> Also arrangement around who determines and collects taxes and other revenues and who spends them, how and on what are fundamental to the real division of powers is necessary in a federal system. In *A.G. Federation v A.G. Ogun State & 4 Ors*,<sup>12</sup> the Supreme Court of Nigeria stated the meaning of 'Revenue' as follows:

the word 'revenue' in this subsection (section 162(1)) has been defined by subsection (10) of section 162 of the constitution as follows: s.162 (10) for the Purpose of subsection (1) of the section, 'revenue' means any income or returns accruing to or derived by the government of the federation from any source and includes:

- (a) Any receipt, however described, arising from the operation of any law;
- (b) Any return, however described, arising from or in respect of any property held by the government of the federation;
- (c) Any return by way of interest on loans and dividends in respect of shares or interest held by the government of the federation in any company or statutory body.

The 1999 Constitution<sup>13</sup> provides that 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 the personal income tax of the personnel of the Armed Forces of the federation, the Nigeria police force, the ministry or department of government charged with responsibility for foreign affairs and the residents of the federal capital territory, Abuja. The president, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly, proposals for

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<sup>6</sup> Ibid.

<sup>7</sup> E. Bulmer, *Federalism 2<sup>nd</sup> edn.*, (Sweden: International IDEA Constitutional-Building Primer 12, 2017), 30.

<sup>8</sup> D. Babalola, 'Fiscal Federalism and Economic Development in Nigeria: The Contending Issues,' (*Global Journal of Political Science and Administration*, vol. 3 No 2, March 2015), 53.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> G. Anderson, *Federalism: An introduction, Forum of Federations Special edn. for NBA Conference*, (Canada: Oxford University Press, 2008), 30.

<sup>12</sup> (2003) 105 LRCN 280 – 538, 432.

<sup>13</sup> S. 162 CFRN 1999 (as Amended).

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.<sup>14</sup> The same constitution provided for the principle of derivation in that the principle of derivation shall constantly be reflected in any approved formula as being not less than 13% of the revenue accruing to the Federation Account directly from any natural resources.<sup>15</sup> Any amount standing to the credit of the Federation Account shall be distributed among the federal and state governments and local government councils in each state on such terms and in such terms and in such manner as may be prescribed by the National Assembly.<sup>16</sup> Also, any amount standing to the credit of the states in the Federation Account shall be distributed among the states on such terms and in such manner as may be prescribed by the National Assembly.<sup>17</sup> The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the states for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.<sup>18</sup> It is submitted that the above provision will hamper the smooth distribution of revenue to the local government councils and therefore, does not augur well with the local government councils. A direct allocation of the amount standing to the credit of the local government Councils would suffice.<sup>19</sup> Each state shall maintain a special account to be called 'State Joint Local Government Account' into which shall be paid all allocations to the local government councils of the state from the Federation Account and from the Government of the state.<sup>20</sup>

The 1999 Constitution further provides that each state shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.<sup>21</sup> And the amount standing to the credit of local government councils of a state shall be distributed among the local government councils of that state on such terms and in such manner as may be prescribed by the House of Assembly of the state.<sup>22</sup> Also, any amount standing to the credit of the judiciary in the Federation Account shall be paid direct to the National Judicial Council for disbursement to the heads of courts established for the constitution. The federation may also make grants to states to supplement the revenue of the state in such sum and subject to such terms and conditions as may be prescribed by the National Assembly.<sup>23</sup> It was stated earlier that Nigeria federation has 36 states and a federal capital territory, Abuja, and 744 local government area councils. The 1999 Constitution<sup>24</sup> gave 68 items as contained in the Exclusive Legislative List to the federal government, which only the National Assembly can legislate upon. And the same Constitution gave 30 items to both the states and federal government to concurrently legislate upon in the Concurrent Legislative List.<sup>25</sup> However, the 13% derivation accruing to the states with natural resources do not include the natural resources in the seaward. Thus, in *A.G. Federation v A.G. Abia & Ors*,<sup>26</sup> the Supreme Court of Nigeria held that the seaward boundary of a litoral state within the Federal Republic of Nigeria is not included for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that state. One wonders why derivation should be pegged at 13% being the least percentage as provided by the 1999 Constitution. The decision of the court in *A.G. Federation v A.G. Abia & Ors*<sup>27</sup> above favourable to the Federal government bothering on on-shore/offshore dichotomy was a big blow to the oil producing States.<sup>28</sup> The said decision was seen by some stakeholders especially the people of the Niger Delta as a political judgment. This is sequel to the fact that it is the people who live close to the sea that suffers the adverse effect of exploration in such seas. The emission from oil exploration and gas flaring adversely affects the occupants of the bank of the seas. The fishes and other aquatic beings in the sea are poisoned and the aftermath of oil mining and exploration becomes a burden to them.

The 1999 Constitution<sup>29</sup> empowers the President to put in place the Revenue Mobilization, Allocation and Fiscal Commission (RMFC). There is no gainsaying the fact that revenue allocation has had a chequered history

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<sup>14</sup>Ibid, s. 162 (2).

<sup>15</sup> Ibid, see Proviso to S. 162 (2).

<sup>16</sup> Ibid, S. 162 (3).

<sup>17</sup> Ibid, S. 162 (4).

<sup>18</sup> Ibid, S. 162 (5).

<sup>19</sup> See Executive Order 10, 2020 which seeks to enforce financial autonomy of the state legislatures and judiciary in Nigeria.

<sup>20</sup> S. 162 (6) CFRN 1999 (as Amended).

<sup>21</sup> Ibid, S. 162 (7).

<sup>22</sup> Ibid, s. 162 (8).

<sup>23</sup> Ibid, s. 164(1).

<sup>24</sup>Ibid, Pt.I, 2nd Sch. bothering on Exclusive Legislative List.

<sup>25</sup>Ibid, Pt. II, 2<sup>nd</sup> Sch. bothering on Concurrent Legislative List.

<sup>26</sup>(2002) 4 S.C.

<sup>27</sup>(Ibid).

<sup>28</sup>Obiajulu, S. Obikeze, E. Anthony and V. Chidubem, *Government & Politics of Nigeria, the Struggle for Power in an African State*, (Onitsha: Book Education Ltd. 2016), 242.

<sup>29</sup>S. 32(b), Pt.1, 3<sup>rd</sup> Sch. to CFRN 1999 (as Amended).

in Nigeria both during the military and the civilian administrations. Nigeria has had series of revenue allocation formulae since 1946. Today, the revenue sharing formula in Nigeria is as determined by the Revenue Mobilization and Fiscal Commission and approved by the National Assembly as follows:<sup>30</sup> Federal government – 52.68%, states – 26.72%, local governments – 20.60%, 13% derivation to the states that have natural resources. Factors such as equality, population, land mass, internally generated revenue and social development determines the allocation of revenue. Some principles, such as equality of access to development opportunities, national minimum standard, absorptive capacity, financial comparability, independent tax effort and fiscal efficiency, may guide the allocation of revenue too.<sup>31</sup> The above sharing formula has been greeted with criticisms on the ground that allocations to the federal government is far higher than that of the sub-nationals and that sub-nationals have lacked sufficient funds for carrying out their responsibilities. Also, some of the factors that determine the sharing formula such as land mass are insignificant. It is against this backdrop that some states and local government councils on various occasions are unable to pay the salaries and allowances of their staff as and when due.

Nevertheless, the 1960 and 1963 Constitutions of Nigeria provided for self-determination and an ideal federalism. The 1963 Constitution of Nigeria provided for Revenue Allocations based chiefly on derivation which was as follows: derivation – 50%, distributable pool – 30%, Federal government – 20%.<sup>32</sup> This fiscal arrangement which was the result of collective agreement of the founding political leaders was terminated by the military junta long before the 1979 Constitution and has never been restored. According to Okunu,<sup>33</sup> those regions which produced certain commodities or minerals profited from those commodities or minerals: 50 % of the profit went to the federal government to manage its exclusive legislative functions, then 30 % was put in a distributive pool which was shared again under this formula- (40 % from the distributive pool went to the northern region because the northern region had more than half of the population of the country and in terms of size, two – thirds of the size of the country; so population really was diffused, not concentrated as in the south, so north took 40 %, western region took 24%, eastern region – 36%, and when mid-west was created, the formula was 18% and 6% for the new Bendel State. He further stated that profits from commodities like cocoa, 50% went to western and Midwestern regions. Cocoa also grew in part of the eastern region, so whichever region cocoa was harvested, each of them will take 50% profits under the revenue allocation formula. He added that Palm oil/Palm kernels were areas where Nigeria was number one and number three in the world then.<sup>34</sup> Eastern Region where the bulk of palm oil, palm kernel grew, took 50%. The northern region had cotton and groundnuts. The famous groundnut pyramids in Kano or Jos had the allocations as such. Each region had sufficient money to run its function under the constitution as efficiently as it wishes to. And the federal government had only 20%. Okunu, however, decried the incessant amendment of the 1999 Constitution of Nigeria and therefore, advised that Nigeria should revert to the 1963 Constitution.

#### 4. Principles of Revenue Allocation

From the history of revenue allocation, the basic principles of revenue allocation include; basic needs, minimum material standard, balanced development, derivation, equality of access to development opportunities, absorptive capacity, minimum responsibility of government, population, social development factor, equality of states, land mass and terrain, internal revenue generation effort, etc.<sup>35</sup> The components of revenue allocation formula in Nigeria are vertical and horizontal formulae. These formulae will be briefly examined below.

##### Vertical Allocation Formula

The vertical allocation formula shows the percentage allocated to the three tiers of government, i.e. federal, state and local governments. This formula is applied vertically to the total volume of the disbursable revenue in the Federation Account at a particular point in time. The vertical formula allows every tier of government to know what is due to it; the federal government on one hand, the 36 states and 774 local government councils on the other hand.<sup>36</sup>

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<sup>30</sup><https://www.jstor.org> accessed 19 March 2021.

<sup>31</sup><https://neiti.gov.ng> accessed 20 March 2021.

<sup>32</sup> S. 140 Constitution of Nigeria 1963.

<sup>33</sup> L.O. Okunu, 'Return to 1960, 1963 Revenue Sharing Formula, Key Solution to Question of Fiscal Federalism', *Restructuring*, <https://www.businessamlive.com/return-to-1960-1963-revenue-sharing-formula-key-solution-to-question-of-fiscal-federalism-restructuring/>, accessed 19 March 2021.

<sup>34</sup> Ibid.

<sup>35</sup> V. I. Lukpata, 'Revenue Allocation Formulae in Nigeria: A Continuous Search', (*International Journal of Public Administration and Management Research*, vol. 2 No. 1 October 2013), 33.

<sup>36</sup> Ibid.

### Horizontal Allocation Formula

The horizontal allocation formula is applicable to states and local governments only. It provides the basis for sharing of the volume of revenue already allocated to the 36 states and 774 local government councils in Nigeria. Through the application of the principles of horizontal allocation formula, the allocation due to each state or local governments is determined. It can therefore, be confidently concluded that vertical allocation formula is for inter-tier sharing between the three tiers of government while the horizontal allocation formula is for intra-tier sharing amongst the 36 states and 774 local government councils in Nigeria.<sup>37</sup> The basic idea behind revenue sharing is quite simple: to strengthen the fiscal capabilities of state and local governments by requiring the central government to share with them a designated portion of the income that accrues to the nation. Revenue sharing would establish the principle that states and local governments should have a guaranteed access to the Nation's revenue.<sup>38</sup> It is only then that they will be able to more effectively carry out their assigned task of delivering the bulk of the domestic public services. On the contrary, fiscal federalism ought to mean that component units (states and local governments) should survive on their own; each state unlocks its potentials. It means real resource control, that is, ownership and control of resources by the people so endowed.<sup>39</sup> In Nigeria, the federal government controls the bulk of the resources available to the country. This could be seen from the devolution of 68 items in the Exclusive Legislative List to be handled by the federal government alone and 30 items in the Concurrent Legislative List which is dealt with by both the federal and state governments as embedded in the 1999 Constitution.<sup>40</sup>

### 5. Distribution of Revenue Powers to the Tiers of Government in Nigeria

The major sources of revenue to the federal government of Nigeria could be categorized into: crude oil; non crude oil; external borrowing and foreign aids. Nigeria's major source of revenue is the sales from the crude oil and other petroleum proceeds. Agriculture was the basic source of revenue to Nigeria before the 1960s.<sup>41</sup> The non-crude oil sources are share of revenue from federal taxes and levies, agricultural sector, aviation, federal examination fees, various forms of licenses fees, import duties and tariffs and other sources. The external borrowing and aids from international monetary agencies such as the International Monetary Fund are other sources.<sup>42</sup> Aids from Western countries equally constitutes source of revenue to the federal government. The sources of states revenue include intergovernmental transfers from the federal government but not transfers from state to local governments. Other sources of state revenues are charges such as tuition paid to the state university, payment to a public hospital and bills on highways provided revenues in some states or countries.<sup>43</sup> And the sources of revenue to the local governments in Nigeria are as enshrined in the 1999 Constitution and the enabling Act for Taxes and Levies (Approval List for Collections Act).<sup>44</sup> They include transfers from the state, rates, fees, naming of streets, right of occupancy, tenement rates, market taxes and levies, motor parks, domestic animals, etc.<sup>45</sup> Tax includes any duty, levy or revenue accruable to the government in full or part under the Act.<sup>46</sup> In *Fargo v Wetz*,<sup>47</sup> the court stated that tax is any payment exacted by the state or its municipal sub-divisions as a contribution towards the cost of maintaining governmental functions where the special benefit derived from their performance is merged in the general benefits. Tax therefore, is an imposition by the government; it is compulsory; it must have legislative backing and it is for the support of the government. Again, in *Aberuagba v Attorney General of Ogun State*,<sup>48</sup> the Supreme Court noted that 'any tax', as used in the provision empowers the states to impose tax on all matters in the Concurrent List and Residual matters. The

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<sup>37</sup> Ibid.

<sup>38</sup> NewsDen Publisher, 'FG, States, LGs Share ₦750bn Revenue for September 2021'. According to the publication, the Federal Government of Nigeria received ₦301.311 billion; the State governments received ₦220.272 billion Local Governments received ₦164.176 billion. The sum of ₦54.206 billion was shared as 13% derivation revenue, totaling ₦739.965 billion, <<https://www.newsden.com.ng/news/fg-states-lgs-sharen740bn-revenue/>> accessed 29 October 2021.

<sup>39</sup> V.E. Ita, E. Ito and T. Inimo- Etele, 'Restructuring Nigerian Federalism: A prognosis for Nation – Building and Socio-Political Stability' (*Journal of Political Science and Leadership Research*, vol. 5 No. 1, 2019), 13.

<sup>40</sup> Pt. I and II CFRN 1999 (as amended).

<sup>41</sup> O. Oghenemarho and D. Blunt 'What are the Major Sources of Federal Government Revenue in Nigeria?' <<https://www.quora.com/what-are-the-major-sources-of-federal-government-revenue-in-nigeria>> accessed 4 April 2021.

<sup>42</sup> Ibid.

<sup>43</sup> K.S. Rueben 'Understanding Taxes that can Raise Revenues to Help Offset Growing Wealth Inequality in the District of Columbia' <<https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initiative/state-and-local-backgrounders/state-and-local-revenues#state>> accessed 4 April 2021.

<sup>44</sup> Cap. T2, LFN 2004.

<sup>45</sup> Ibid.

<sup>46</sup> S.69 FIRS (Establishment) Act No. 13 of 2007, LFN 2004.

<sup>47</sup> (1918) ALR 40 N.D 299, 168.

<sup>48</sup> (1985) 1 NWLR (Pt.3), p 395.

reasoning of the Supreme Court in the above case is in tandem with the provisions of the 1999 Constitution.<sup>49</sup> The Taxes and Levies (Approved List for Collection) Act provides thus:<sup>50</sup>

Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria or in any other enactment or law, the federal government, state government and local government shall be responsible for collecting the taxes and levies listed in Part I, Part II and Part III of the Schedule to this Act, respectively.

The taxes and levies due to the federal government as provided by the Act include the followings:<sup>51</sup> companies incomes tax; withholding tax on companies; residence of the Federal Capital Territory, Abuja; and non-resident individuals; petroleum profits tax; value added tax; capital gains on residents of the Federal Capital Territory, Abuja; bodies corporate and non-resident individuals; stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja; personal income tax in respect of: members of the Armed Forces of the Federation; members of the Nigeria Police; residents of the Federal Capital Territory Abuja and staff of the Ministry of Foreign Affairs and non-resident individuals. The Taxes and Levies collectable by the state governments are as follows:<sup>52</sup> personal income tax in respect of; Pay-As-You-Earn (PAYE); direct taxation (self-assessment); withholding tax (individual only); capital gains tax (individual only); stamp duties on instruments executed by individual; pools, betting and lotteries, games and casino taxes; road taxes; business premises registration fee in respect of urban areas as defined by each state; naming of streets; registration fees on lands owned by the state government in urban areas of the state; market taxes and levies where state funds are involved. Again, only the states have powers to collect or levy taxes on the Residual List. Residual List refers to the leftover powers which are included in neither the Exclusive List nor Concurrent List.<sup>53</sup> Also, taxes and levies collectable by the Local Government as listed in the Act include the followings:<sup>54</sup> shops and kiosks rates; tenement rates; on and off liquor license fees; slaughter slab fees, naming of streets registration fee, excluding any street in the state capital; right of occupancy fees on the lands in rural areas, excluding those collectable by the federal and state governments; market taxes and levies excluding any market where state finance is involved, motor park levies, domestic animals license fees, bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck; cattle tax payable by cattle farmers only; merriment and road closure levy, radio and television license fees (other than radio and television transmitter), vehicle radio license fees (to be imposed by the local government of the state in which the car is registered), wrong parking charges; public convenience, sewage and refuse disposal fees; customary burial ground permit fees; religious places establishment permit fees; signboard and advertisement permit fees. However, the Court of Appeal in *Uyo Local Government Council v Akwalbom State Government & Anor*<sup>55</sup> nullified the Taxes and Levies Act for being inconsistent with the provisions of the 1999 Constitution. The need to avoid double and multiple collections from tax payers necessitated the categorization of the tax levies and collections. In spite of the categorization above, some tiers of government still collects taxes and levies that are not categorically within their purview. Thus, in *Bamidele v Commissioner for Local Governments*,<sup>56</sup> the plaintiff brought an action against the Lagos state government over its interference in running of Alayabiagba market in the Lagos Island Local Government. The Supreme Court held among other things that:

The first lesson is that institutions which ensure democracy mustnot be allowed to take any other form and be personalized. If they are, they became open to grave abuse. All this applies as such to the doctrine of separation of powers as to powers of the different tiers of government in a true federalism.

In the US, the Supreme Court in *Bailey v Drexel Furniture Company*,<sup>57</sup> where the Congress passed the Child Labour Tax Law under which the plaintiff company was assessed \$312.7 in 1919, held that such power belonged to the state and not the Congress and declared the law null and void.<sup>58</sup> The Supreme Court of Nigeria has also stated that where the federation is permitted to exercise a bare and naked power to regulate and plan the development of towns and cities in the state, we could as well forget about federalism. A court charged with the

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<sup>49</sup>S.7(a-c), CFRN 1999 (as amended).

<sup>50</sup> S. 1(1) Taxes and Levies (Approved List for Collection) Act, LFN, 2004.

<sup>51</sup>Ibid, Pt. I.

<sup>52</sup>Ibid, Pt. II to the Sch.

<sup>53</sup>S.Khemani, 'Powers of the Federal, State and Local Governments in Nigeria' Lawakhigbe.com, available on <<https://lawakhigbe.com2017/06/30/powers-of-the-federal-state-and-local-government-in-nigerian/>>accessed 29 July 2021.

<sup>54</sup>Pt. III. Taxes and Levies (Approved Lists for Collection) Act LFN 2004.

<sup>55</sup>(2020) LPELR-49691 (CA).

<sup>56</sup>(1994) 2 NWLR (Pt. 328), 568.

<sup>57</sup> 259 US 20; 42 Sc. p 449.

<sup>58</sup>Ibid, 587.

guardianship of the constitution must not allow that to happen.<sup>59</sup> Usurpation of taxing powers in Nigeria is antithetical to the tenets of fiscal federalism. In *Eti-Osa Local Government v Rufus Jegede*,<sup>60</sup> one of the issues before the court was whether Eti-Osa Local Government Area of Lagos State can collect taxes and levies outside the area specified in Part III of Taxes and Levies (Approved List for Collection). The Court of Appeal, per Dongba Mensem, held that the respondent (Eti-Osa Local Government), Lagos State, has no power to legislate and demand whatever taxes and levies it deems fit outside the provisions of the Taxes and Levies (Approved List for Collection) Decree No 21 of 1998 now LFN 2004. Also, in *Knight, Frank & Rutley v Attorney General, Kano State*,<sup>61</sup> the Supreme Court, per Wali JSC, stated that:

The power to assess rates on private owned houses or tenements for the purpose of levying such rate is within the exclusive statutory power of each local government as conferred on it by section 7(5) of the 1979 Constitution and paragraph 1(6) and (i) of the Fourth Schedule ...

Again, in *Mobil Producing Nigeria Ltd v Tai Local Government Council & 2 Ors*,<sup>62</sup> the first defendant (Tai Local Government Council) passed a bye-law which required the payment of tax on education/youth empowerment, local government unified sticker, craftsmanship development skill, community development, effluent discharge pollution, Niger Delta development permit, landing index/oil gateway, agricultural resources, etc. The court per Nwodo J. held inter alia that:

The 1999 Constitution has clearly set out the relevant guidance for determining the legal scope of the areas within which the tiers of government within our federal system may or may not operate. The Taxes and Levies (Approved List for Collection) Decree 1998 commonly referred to as Decree No 21 was promulgated by the federal government in 1998 to avoid multiplicity of taxes, section 1(1) of Decree No. 21 stipulates that the Federal Government, State and Local Governments shall be responsible for collecting the taxes and levies listed in Parts I, II and III of the Schedule to the Decree respectively. The relevant Part on the present application is Part III of the Schedule which has listed the taxes and levies to be collected by the local government.

However, in 2015, the Federal Government of Nigeria, during the administration of Goodluck Jonathan, through the Minister of Finance, Ngozi Okonjo-Iweala, amended the Taxes and Levies (Approved List for Collection) Act.<sup>63</sup> The list of taxes and levies for the state government were increased from 11 to 25. And the taxes and levies for the federal government were increased from 8 to 9 upon adding National Information Technology Development levy while the taxes and levies for local governments were increased from 20 to 21. There was the 4th Schedule which contains 6 levies that are to be harmonized among the state and local governments. They include:<sup>64</sup> land use charge where applicable; hotel, restaurant or event center consumption tax or levy where applicable; entertainment tax, where applicable; environment (ecology) fee or levy; milling and quarrying fees, where applicable; animal trade tax, where applicable; slaughter or abattoir fees, where state finance is involved; infrastructure maintenance charge or levy, where applicable; fire service charge; property tax, where applicable; economic development levy, where applicable; social service contribution levy, where applicable; and signage and mobile advertisement, jointly collected by the state and local government. The amount for the registration of business name earlier stated was deleted and to be determined by each of the tiers of government from time to time. Local government's additional one item is: wharf landing charge, where applicable. The state governments became the highest beneficiary of that amendment, with 14 additional items. Nevertheless, on 8 May 2020, a Federal High Court sitting in Lagos, in *Registered Trustees of Hotel Owners and Managers Association of Lagos* (suing for itself and on behalf of all its members) v *A.G. Federation & Anor*,<sup>65</sup> held that the Ministerial Order 2015 is unconstitutional, null and void. The court further stated that the 1999 Constitution (as amended) vests the legislature with the power to make and amend laws. By necessary implication, these new taxes and levies contained in the Ministerial Order 2015 has been removed from the Taxes and Levies (Approved List for Collection) Act and so cannot be enforced based on the decision of the Court of Appeal in *Eti-Osa Local Government v Jegede*,<sup>66</sup> where the Court of Appeal held that taxes cannot be enforced except they are contained in Part III of Decree No. 21 of 1998, now known as Taxes and Levies (Approved List for Collection) Act, 2004.

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<sup>59</sup>A.G. *Lagos State v A.G. Federation* (2003) 12 NWLR (Pt. 833) p 8.

<sup>60</sup>(1986) INWLR (Pt. 16), p 264.

<sup>61</sup>(1998) 7 NWLR (Pt. 556), p 5.

<sup>62</sup>(2004) 10 NWLR (Pt.100), p 80.

<sup>63</sup> Cap. T2, LFN, 2004

<sup>64</sup> Cap. T2 LFN 2004.

<sup>65</sup>FHC/L/CS/1082/2019.

<sup>66</sup>(2007) 10 NWLR (Pt. 1043), p 537.

However, the Court of Appeal in *Uyo Local Government Council v Akwalbom State Government & Anor*<sup>67</sup> nullified the Taxes and Levies Act for being inconsistent with the provisions of the 1999 Constitution.

## 6. Fiscal Federalism in Some Other Countries

Nonetheless, in comparative terms, it should be noted that in other federations such as Switzerland, Canada, Belgium and Germany, the central government spending is the smallest.<sup>68</sup> In Germany, the reason is because the Lander (States) are responsible for delivering many federally legislated programs, while in the case of Switzerland, Canada and Belgium, it reflects the importance of the responsibilities of the component units. The central government directs spending in most federations, such as Argentina, Australia, Austria, Brazil, India, Mexico, Russia, Spain, South Africa, Nigeria and the USA, etc. These countries fall between 45 – 60% in favour of the central or federal government.<sup>69</sup> At the extreme are Malaysia – 84% and Venezuela – 78%. This does not augur well for federalism because autonomy is eroded. There is a cluster of federations (Austria, Australia, Belgium, Brazil, India, Germany and Spain) in which the central government collects between 60 – 75% of total revenues.<sup>70</sup> And there are some federations, ie, Argentina, Malaysia, Mexico, Nigeria, Russia, South Africa, Venezuela, where the Federal government levies and collects over 80% of revenues. Nigeria and Venezuela are the most extreme cases, with central revenues of 98 and 97% respectively.<sup>71</sup> Federations vary in the degree to which revenue collection and programme spending are centralized. But in all federations, the central government raises more revenues, including through borrowing than it needs for its own direct spending, partly because of the advantages of significantly centralized revenue collection. Central governments make fiscal transfers to the component units and sometimes directly to local governments to enable them meet their needs and responsibilities. The importance of the transfer varies from one federation to another. In some federations, component units raise on average, less than half of their spending.<sup>72</sup> Throughout the history of the U.S' federalism, the federal government has used its resources to aid states and localities in dealing with domestic problems. The classical response to the emergence of the major domestic problem has been to create a new federal aid programme while these individual categorical programmes have helped and will continue to help, there is increasing recognition of the need not only to deal with national problems but also to strengthen other institutions, that is, state and local governments.<sup>73</sup> The Constitution of the US provides that:<sup>74</sup> 'the Congress shall have power to collect taxes, duties, import and excise... and provide for the general welfare of the US.' As the federal government's power to levy taxes is not exclusive, states retain the right to levy taxes and to regulate the taxing powers of local government. Although, there are no shared taxes, more than one tier of government may exploit the major revenue sources. Both tiers of government - federal and state governments may levy personal and corporate income taxes and selective taxes. There are no provisions in the US Constitution which prescribed inter-governmental transfer. Consequently, there have been no generalized schemes in the US for vertical transfers or for equalization programmes. However, because of broad discretionary revenue-raising and spending power of the federal government, an extensive system of intergovernmental transfers has grown up. Such transfers are almost solely in the form of conditional grants, often with conditions closely specified.<sup>75</sup> Although, States have considerable taxing ability, at the same time, most services are provided by States and Local governments.<sup>76</sup> This asymmetry between revenues and expenditures at the state and local level means that the federal government today plays a vital role in financing and influencing the provision of services at the state and local levels of the government. The areas affected by most federal grants-in-aid are those traditionally reserved for the states as part of their residual powers in the U.S Constitution.<sup>77</sup> The economic effects, advantages and disadvantages of different taxation systems are beyond the scope of this article, but suffice to state that a key consideration for constitutional designers is the extent to which the component units should have their own tax base and their own revenue-raising powers.<sup>78</sup> Flowing from the above, it appears that the sub-nationals in the U.S equally depend on the federal government for revenues and grants. Nevertheless, whatever

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<sup>67</sup>(2020) LPELR-49691 (CA).

<sup>68</sup> G. Anderson, *Federalism: An introduction, Forum of Federations Special edn. for NBA Conference*, (Canada: Oxford University Press, 2008), 34.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid 33.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid, p 36.

<sup>73</sup> A.D. Lynn, 'Information Reports: Revenue Sharing – An Idea Whose Time has Come', (Advisory Commission on Intergovernmental Relations, (U.S.A: September 1970), p 15, <via.library.depaul.ed> accessed 23 April 2021.

<sup>74</sup> Art. 1, S. 8, US Constitution.

<sup>75</sup> R.L. Watts and M. Vigneault, *Fiscal Federalism in the United States* (USA: 2000), p 4, available on WattsFiscalFederalismUSA.pdf. Accessed 2 April 2021.

<sup>76</sup> Ibid, 32.

<sup>77</sup> Ibid.

<sup>78</sup> E. Bulmer, 'International Institute for Democracy and Electoral Assistance' 2<sup>nd</sup> edn, (Sweden: International IDEA, 2017), p 30, available on aceproject.org, accessed 2 April 2020.

the constitutional distribution of legislative powers, the distribution of access to funds can be a major determinant of the practical degree of centralization or decentralization of the Federal system in question. It follows that robust funding arrangements that gives State and Local governments or provinces sufficient resources and sufficient autonomy in the allocation of those resources are necessary if effective decentralization of power is to be a reality. A common arrangement in federations is for some taxes to be levied by sub-national units and others to be levied by the federal government, and for this assignment of tax-collecting powers to be constitutionally prescribed.

### **7. Challenges of Fiscal Federalism and Allocation in Nigeria**

The argument on Nigeria's fiscal federalism is premised on the fundamental question of who gets what of the national cake, when and how?<sup>79</sup> This is fundamental given that Nigeria as a monolithic economy gets over 80% of its revenue from crude oil. By virtue of the constitutional provision, this revenue must be disbursed to the three tiers of government.<sup>80</sup> It also explains why the formula for revenue allocation has continued to be at the heat of public debate. There are so many challenges bedeviling intergovernmental fiscal relations in Nigeria and they include:<sup>81</sup> non-correspondence problem; lack of fiscal autonomy and independence; federation account and derivation fund; oil-producing areas and the derivation principle and intergovernmental fiscal relations and the economy. Other challenges of fiscal federalism in Nigeria include: the problem of external debt overcharge; macro-economic instability; distresses in domestic financial system; lack of political stability; and above all, leadership ineffectiveness.<sup>82</sup> Umana was of the utmost view that the challenges of fiscal federalism in Nigeria bothers on centralist system of fiscal relations; unsystematic creation of new States; conflict over sharing principle; and over-dependence on oil revenue.<sup>83</sup> Again, Adedeji and Ezebasili<sup>84</sup> were of the view that the problems of fiscal federalism include: dominance of the federal government in revenue sharing; centralist system of fiscal relation; critical issue of over dependence on oil revenue; disharmonious federal-state relations. The challenges of fiscal federalism will be briefly adumbrated below. Flowing from the above, it is submitted that the challenges bedeviling fiscal federalism and allocations could be summed up as follows: unacceptable sharing formula of the revenue accruing to the federation; lack of fiscal autonomy and independence of the federating units and over reliance on oil revenue, etc. It must be stated that the current centralization of fiscal policies in Nigeria is not working; the trend now is decentralization. It is therefore, high time the Nigerian fiscal federalism is totally decentralized in order to pave way for economic development and growth at the grassroots. This would as well cushion the effect of the clamour for secession and disintegration in the country.

### **8. Conclusion**

So many issues bedeviling Nigeria fiscal federalism have been raised. In order to be effective and pursue the economic goals of development and growth, the following recommendations are made.

1. The Nigerian fiscal policies should be decentralized; more fiscal powers, i.e. taxing powers, should be devolved to the component units, that is, some items in the Exclusive Legislative List, such as oil mines, exploration, police, marriage, incorporation, etc., should be devolved to the component units.
2. Similar provisions in the 1963 Constitution of Nigeria such as powers to control the resources deposited in the domain of the component units should be embedded in 1999 Constitution in order to orchestrate true or ideal fiscal federalism.
3. The sharing formula for the monthly transfer from the federation account should be made directly to every tier of government and the local government and state governments should have greater allocations.
4. There should be a strong policy on diversification from the oil sector to agriculture, sciences and technology, rather than rely solely on revenue from oil and gas alone.
5. The current 1999 Constitution of Nigeria should be jettisoned and another one to be drafted by a constitutional conference to be convened or same should be amended to reflect the recommendations above.

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<sup>79</sup> W.A. Ejeh, Orokpo and E.F. Ogbale, 'Fiscal Federalism in Nigeria: An Analysis of Issues and Challenges,' (*International Journal of Peace and Conflict Studies*, vol. 2 No. 1, March 2014), 37.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

<sup>82</sup> J.O.Nkwede, T.B. Nwaliand J. Orga, 'Fiscal Federalism and Challenges of Development in Nigeria: A search for Remediation' <<https://www.longdom.org>>, accessed 25 April 2021.

<sup>83</sup> K.O. Umana, 'Challenges of Fiscal Federalism in Nigeria and Solutions', <<https://researchcyber.com/challenges-fiscal-federalism-nigeria-solutions/>>, accessed 25 April 2021.

<sup>84</sup> A.O. Adedeji and I.E. Ezebasili, 'Restructuring and Clamour for 'True' Federalism in Nigeria: A Comparative Analysis,' (*Advances in Social Sciences Research Journal*, vol. 5 No 2 2018), 160.

It is hoped that if those in authority can safely implement the above recommendations, fiscal federalism in Nigeria will achieve the set objectives of accelerated growth and socio-economic development. It is submitted that fiscal federalism is aimed at a balanced federation, socio-political and economic growth. Fiscal autonomy no doubt allows an arrangement where the component units raise and controls all their financial resources through internally general revenue taxes and other sources of revenue. Therefore, fiscal federalism entails a robust arrangement that propagates the autonomy of the sub-nationals and sustains decentralization which is now the new order in federations. The sub-nationals are incapacitated consequent upon the meager resources available to them. In Nigeria, lack of decentralized fiscal policies, autonomy and inadequate revenue sharing formula and power devolution, over reliance on the oil revenue and inadequate derivation are the challenges of fiscal federalism among others. This has no doubt adversely affected the gamut of Nigeria's socio-political and economic sphere as the goose that lays the eggs are not catered for. Fiscal federalism in Nigeria is antithetical with what is obtainable in some climes such as the US where fiscal power is devolved to the sub-nationals and certain level of autonomy is eroded in Nigeria and therefore, calls for a redress otherwise, the current structure upon which the Nigerian fiscal federalism is anchored would continue to plunge the country's economic growth into the doldrums. It is concluded that decentralization is the new order and key to success and it is therefore, to be genuinely propagated in Nigeria by allocating more fiscal powers to the sub-nationals in order for the country to achieve its set goal and objectives of economic stability.