

FISCAL FEDERALISM AND QUEST FOR RESTRUCTURING IN NIGERIA: LESSONS FROM UNITED STATES OF AMERICA*

Abstract

Restructuring is no doubt the latest and most argued issue in the political and fiscal history of Nigeria. Both political and non-political actors throw their weight, ideas and perception of what they presumed the concept of restructuring to mean. There are generally two basic methods or mode of restructuring in Nigeria; the conservative and the radical method of restructuring. The two methods are in agreement that there is fundamental defect in the Nigerian fiscal federal system because of the over-centralization of the federal system following decades of military rule with its central command structure, the lack of compliance or adherence to the constitutional provision of federal character and marginalization of certain geopolitical zone. The Nigerian Constitution vested the power to impose tax only on the National Assembly, and thereby making the State and Local Governments subject to the Federal government instead of coordinate. The United States has a decentralized tax administration with each federal, state, and local government having its own tax administration to collect the taxes it imposed. This decentralization gives each government maximum fiscal independence and control over the base and rates of its taxes. More so, in United States of America, the local governments have right to self-government both politically and fiscally, making them largely autonomous, able to administer their own local ordinances, regulations, license, tax and acquire debt. This study is aimed at critical examination of restructuring questions in Nigeria and possible lessons from the United States of America. The work adopted the doctrinal research methodology and data were gathered from both primary and secondary sources. The study discovered that the legal frameworks on restructuring in Nigeria are only in favor of centralization of fiscal powers. The study recommended that the Constitution of the Federal Republic of Nigeria 1999 (as amended) be further amended to grant fiscal autonomy to the State and the local governments, granting them powers to impose and administer, and collect taxes imposed.

Keywords: Fiscal Federalism, Restructuring, Nigeria, USA

1. Introduction

Every government pursues economic development by trying to achieve macroeconomic objectives in a particular system of government. Various systems of government include federation, unitary, and confederation. The Nigeria's system favors federation. The federation of Nigeria achieves her macroeconomic objectives by performing the functions of resource allocation, income distribution/redistribution, and economic stabilization within the central government, that is, federal government and its units (states and local governments), the system of performing government functions by the different tiers of government is called fiscal federalism. The Nigeria federalism has been distorted from its original practice and structure by long military incursion in politics through centralization of power. This scenario has created imbalances, enormous tensions and intensifies conflicts that reinvigorate many tribal sects to outwit the formal security apparatus in the structure of Nigeria. The yearnings and aspirations of these sects have been considered as uneven development in fair-share of the national cake; and restructuring is the only pathway to sustain peaceful coexistence in Nigeria. The concept of restructuring is designed to balance all ethnic groups to have a stake on matters concerning the economic base and other basic services leaving the center to decide only on exclusive matters especially defense, foreign relations, immigration, national security among others¹.

Nigeria is a Federal Constitutional Republic comprising of 36 States and the Federal Capital Territory, Abuja. The states are further subdivided into 774 Local Government Areas (LGAs)². In Nigeria, the agitation revolves around resource control, review of revenue sharing formula, devolution of power, return to regional federal system of government based on six geo-political zones, return to parliamentary system of government, removal of immunity clause from the constitution, creation of state police, role of traditional rulers, among others. The core demands of the cheerleaders of restructuring are devolution of power from the federal government on security and resource control to State Governments that is to strengthen the states and weaken the central government. The last National Conference

*By **Jeremiah Ogona UKPAI, LLB, LLM Candidate**, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, ***Ejike Francis OKAPHOR, PhD**, Senior Lecturer, Department of Clinical Legal Education, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, E-mail: ef.okaphor@unizik.edu.ng; and ***Chinazor Queen UMEOBICA, PhD**, Senior Lecturer and Head, Department of Private and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, E-mail: cq.umeobika@unizik.edu.ng 0803501858

¹ MI Okeke, *et al*, 'The quest for restructuring and Ethnic Balancing in Nigeria: the Dynamics and Realities for true Federalism' 2020 *International Journal of Academic Multidisciplinary Research (IJAMR)* https://www.academia.edu/42584229/The_Quest_for_Restructuring_and_Ethnic_Balancing_In_Nigeria_The_Dynamics_and_Realities_for_True_Federalism>accessed on 18th August, 2023

² Section 2 of the 1999 Constitution of Federal Republic of Nigeria, (as amended)

before the 2015 General Elections has not yielded any result beyond a waste of resources as the recommendations are yet to be implemented³

Fiscal federalism is a particular pattern of constitutional division of revenue powers and responsibilities among levels of government. The dynamism and complexity of Nigeria's federalism has attracted academic scrutiny. This is because it has generated so many problems capable of threatening the corporate existence and continuity of the Nigerian state. The federal government has occupied a very strong position vis-à-vis the State and Local government since the 1970's in Nigeria. The true practice of fiscal federalism in Nigeria has been inhibited by several factors which include, the dominance of the federal government in the sharing of national financial resources from the Federation Account, the imposition of the command structure of the military on fiscal federalism, the pattern of assignment of responsibilities by the constitution among federating units, and over-reliance on the revenue from the Federation Account. No doubts, fiscal federalism is unarguably a potent economic strategy that can be used to maximize provision of public services as well promote macroeconomic stability. Central to the success of fiscal decentralization, is clarity in revenue and expenditure authority and responsibilities⁴.

2. The Practice of Federalism in the United States of America: A Comparative Analysis with Nigeria

Constitution of the United States of America

The United States of America became the first modern federation in 1789 following the failure of the previous Confederal form of government established in 1781. At its origin the federation was composed of 13 States. Since then, it has expanded across the continent and evolved into a federation of 50 States. The United States survived a devastating Civil War, 1861-1865, during the first century of its existence, but still operates under the original federal constitution of 1789. It is, therefore the longest standing federation in the world, and it serves as an important reference point in any comparative study of fiscal federalism⁵. In comparative terms, the United States is moderately non-centralized. The major feature of the distribution of powers, which applies symmetrically to all 50 states, is the arrangement whereby the Constitution lists subject matters delegated to the federal government and leaves fairly substantial residual authority to the states. Those powers delegated to the federal government are mostly concurrent with federal law prevailing in cases of conflict with state laws⁶. The Constitution invests the federal government with a very broad discretionary revenue raising power⁷. Article One, Section 8 states that "The Congress shall have Power to lay and collect Taxes, Duties, Imports and Excises...and provide for the...general welfare of the United States." However, as the federal government's power to raise taxes is not exclusive, states retain the right to levy taxes and to regulate the taxing powers of local governments⁸. Thus, although there are no shared taxes, more than one order of government may exploit the major revenue sources. For example, both orders of government may levy personal and corporate income taxes, and selective sales taxes⁹.

The United States of America has a decentralized tax administration system, with each order of government having its own administrative system to collect the taxes it imposes¹⁰. In general, the Constitution does not distinguish between the law-making and spending powers of the federal and state governments¹¹. Due to the large area of concurrent jurisdiction, there is extensive overlap in the jurisdictions of the two orders of government. In these areas there is extensive federal funding of matters that lie within the legislative competence, although not the exclusive competence, of the states.

³MM Abdullah 'Restructuring Nigeria Beyond Political Rhetoric and the Moral Panic in Nigeria' <[https://www.academia.edu/37687697/restructuring Nigeria beyond political rhetoric and the moral panic](https://www.academia.edu/37687697/restructuring-Nigeria-beyond-political-rhetoric-and-the-moral-panic)> accessed on 18th August, 2023.

⁴A Owolabi; Legal Framework for Fiscal Federalism: Issues and Options for Reform ;https://www.academia.edu/24837180/Legal_Framework_for_Fiscal_Federalism_Issues_and_Options_for_Reform> accessed on 18th August, 2023.

⁵RL Watts & M Vigneaut, Fiscal Federalism in the Unites States<https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/WattsFiscalFederalismUSA2000.pdf> accessed on the 10th October, 2023.

⁶RM Bird (2009), 'Taxation in Latin America: Reflections on Sustainability and the balance between efficiency and equity', working paper [0306], Rotam School of Management, University of Toronto, 26th June.

⁷R L Watts, 'The Spending Power in Federal Systems: A Comparative Study (Kingston: Institute of Intergovernmental Relations, 1999), 10.

⁸JG Stotsky and E M Sunley, 'United States,' in Teresa Ter-Minassian, ed., Fiscal Federalism in Theory and Practice (Washington: International Monetary Fund, 1997), 364

⁹R L Watts, The Spending Power in Federal Systems: A Comparative Study (Kingston: Institute of intergovernmental Relations, 1999), 368

¹⁰ Note 9

¹¹ Note 10

Nigeria's Position Compared with the United States of America

Historically, the intention of Lord Lugard's amalgamation was to unite the country to promote peace and unity with little or no consideration on the ethnic, cultural dynamics of various regions in terms of resource allocations. One of the contemporary issues in the political economy of oil in Nigeria is the ownership question or what has come to be termed 'resource control'. The Constitution did not grant fiscal autonomy to the States and Local governments of the Federation. Fiscal federalism in Nigeria is centralized and vested on the central government. In other words, the State and Local governments lack fiscal autonomy under the Nigerian Constitution. What appears to be a financial autonomy of the States as provided under the Constitution¹² is a mirage, in that the States and Local governments have no powers to impose taxes and or generate revenue for their use. All the monies or revenue generated by either of the States, local government and their agencies shall be paid to the Consolidated Revenue Account of the State, which by Section 163 of the Constitution of Federal Republic of Nigeria 1999 be shared to the states as a derivative fund. The Court in interpreting Section 120 and 121(3) of the Constitution of Federal Republic of Nigeria held in the case of *Inuwa v Governor of Gombe State & Ors*¹³ that it is mandatory that all revenue accruing to the State other than money paid to the state for specific purpose shall be paid into the consolidated Revenue Fund Account of the State. This includes also the fines and fees generated by the courts in any state of the federation. The rationale behind this is nothing but the fact that the State tiers of the government lack constitutional powers to impose and administer taxes or fine in Nigeria. All the taxes in Nigeria are imposed by the National Assembly pursuant to the provisions of the constitution of the Federal Republic of Nigeria.

The items with which the National Assembly has Exclusive powers to legislate on are provided pursuant to part I of the 2nd Schedule to the Constitution¹⁴. The power of the National Assembly to make laws is also extended to the matters contained in the Concurrent Legislative List and any other matters or item not expressly mentioned in the Constitution¹⁵. The implication of the above provision is that the State Houses of Assembly by implication lack powers to make laws and any law made by the State House of Assembly is existing under the mercies of the Act of the National Assembly¹⁶. The State government in Nigeria despite the existence of federalism is dependent on the Central government for their funding. They lack the constitutional powers and right to impose taxes and act independently. Any money generated by the State government or the Organ of the government are to be paid to the Consolidated Revenue Account, domicile with the Federal government¹⁷. The Federal government in return paid the State Government and its organ which is termed derivative fund¹⁸.

The United States of America has adopted several programs to restructure their Country both politically and fiscally, these programs have brought the United States of America to the point they are today. It has decentralized tax administration with each federal, state, and local government having its own tax administration to collect the taxes it imposes. This decentralization gives each government maximum fiscal independence and control over the base and rates of its taxes. This independence, however, results in higher compliance costs for taxpayers and higher administrative costs for the tax authorities. Most individuals and businesses file both federal and state income tax returns. They first complete their federal income tax returns before beginning their state return. The burden in filling out their state returns depends largely on the degree of conformity between the state and federal income tax laws. There can be considerable horizontal tax over lapping when an individual lives in one jurisdiction and works or earns income in another, or when an individual moves from one jurisdiction to another. The U.S. Constitution granted the federal and state governments independent taxing powers, while local governments derive their powers to tax from the state governments. Each government imposes its own taxes. There are no shared taxes, although more than one government may exploit the major revenue sources. Most states impose their own personal and corporate income taxes, sales taxes, and wealth transfer taxes.

3. Response of the United States Government to Restructuring and Fiscal Federalism: Impact on Nigeria

The evolution and processes of restructuring and fiscal federalism in the United States of America is worthy of emulation and be incorporated into Nigeria. The powers to impose and administer taxes were equally granted to the States and the Local Governments and same were incorporated in the United States of American Constitution. It is obvious from the above analysis that the United States of America operates true fiscal federalism. The United States of America from time to time initiates programs to restructure their federal system to ensure true fiscal federalism. The Federal government would equally give grant to either the states or the local government to meet up with their expenses where it appears that the States or Local government were unable to meet up, this is done to ensure that

¹² Sections 120 and 121(3) of the Constitution of Federal Republic of Nigeria 1999

¹³ (2019) LPELR-47079 (CA)

¹⁴ Section 4(2) of the Constitution of Federal Republic of Nigeria 1999

¹⁵ Section 4(4)(a) (b) of the Constitution of Federal Republic of Nigeria 1999

¹⁶ Section 4(5) of the Constitution of the Federal Republic of Nigeria 1999

¹⁷Section 120 of the Constitution of Federal Republic of Nigeria 1999

¹⁸ Section 163 (3) of Constitution of Federal Republic of Nigeria 1999

none of the State or Local government felt marginalized. At some point it became obvious that the property taxes were no longer sufficient revenue for the Local government to meet up, as most of the family breadwinners were unable to pay those taxes as a result of lack of employment, those persons who were out of employment were exempted from paying taxes. Nigeria can as well adopt those programs and in the spirit of restructuring to grant financial independence to the States and Local government, rather than the federal government mandating the State and local government to pay fees or revenue generated in the State or Local government into the Consolidated Fund Account of the Federation, the federal government should from time to time give grants to the States and Local government to meet up with their expenses and needed development to avoid marginalization.

4. Role of the Legislature in Promoting Restructuring and Fiscal Federalism in Nigeria

Restructuring in the context of a nation has been underscored to mean redefining the relationship between the people and the government, including taking another look at the structures and systems of governance as encapsulated in the constitution. Nigeria is a democratic country guided by the constitution. The Constitution is the highest law of the land from which other laws derive their validity¹⁹. The Constitution empowered the Legislatures to make laws for the good governance of the whole federation²⁰. The legislative powers under the constitution are divided into two, between the National House of Assembly and the State Houses of Assembly. The National Assembly has powers to make laws for the peace order, and good governance of the Federation or any part therefore with respect to any matters as contained in the Exclusive Legislative list and Concurrent Legislative list in the 2nd schedule to the Constitution, whereas the State Houses of Assembly have the powers to make laws for the peace, order and good governance of the State of the Federation in any matter as contained in the Concurrent Legislative list and Residual list. The Legislatures have powers also to prescribe formula for the sharing of the revenue in the Federation Account²¹, these duties can be discharged to reflect true federalism. The President of Nigeria is constitutionally saddled with the responsibilities to appoint the ministers as maybe confirmed by the National Assembly (Senate)²². That is to say that the appointment of any minister by the President is dependent on the confirmation by the National Assembly of such person so nominated by the President, the President has no Constitutional powers to mandate the National Assembly to amend or alter any provision of the Constitution to suit him²³. The appointment of the Ministers by the President shall be in conformity with the provision of Section 14(3) of the Constitution of Federal Republic of Nigeria 1999²⁴.

The Legislature in ensuring that Nigeria is restructured and in giving effect to true federalism should refuse to the confirmation of any minister presented by the President that do not represent federal character under the constitution²⁵. Although it has been argued that Section 14(3) of the Constitution falls under chapter 2 of the Constitution which is non-justiciable, the Court has held that by reference to the Section 14(3) in Section 147 of the Constitution of Federal Republic of Nigeria has brought same under the sections that are justiciable²⁶. The principle of federal character of Nigeria equally applies to the appointment of Judges by the president²⁷. Constitutionally, the Federating States and Local Governments lack the fiscal autonomy, they depend solely on the federal government for their funding. The 1999 Constitution of Federal Republic of Nigeria was drafted in such a manner that the powers to impose and administer any taxes are vested exclusively on the National Assembly. The State Houses of Assembly and the Local Government have no power to impose any tax under the Constitution in reality, and this has been one of the challenges of fiscal federalism in Nigeria. For there to be effective restructuring and fiscal federalism in Nigeria the Legislatures particularly the National Assembly shall have to exercise their powers pursuant to Section 9(1)²⁸ to amend the Constitution of the Federal Republic of Nigeria to grant power to the State and Local government to impose and administer taxes. Doing this will reduce to the barest minimum the level of dependence of the States and Local Governments on the Federal governments for their funding, it will equally answer the question of marginalization of certain ethnic group and bring more development etc.

5. Is Restructuring connected to Political and Structural Inclusion of all Ethnic Nationalities in Nigeria?

Nigeria consists of thirty-six (36) States with each State of Nigeria named in the 1st column of the Part 1 of the first Schedule to the constitution shall consist of the area shown opposite thereto in the 2nd column of that schedule²⁹. There shall be seven hundred and sixty-eight local government area in Nigeria as shown in the second column of Part

¹⁹ Section 1(3) of the Constitution of Federal Republic of Nigeria 1999.

²⁰ Section 4 of the Constitution of Federal Republic of Nigeria 1999

²¹ Section 162(3) (4) (5) (6) of the Constitution of Federal Republic of Nigeria 1999

²² Section 147(2) of the Constitution of the Federal Republic of Nigeria 1999.

²³ *The President Federal Republic of Nigeria & Anor v National Assembly & Ors (2022) LPELR-5851(SC)*

²⁴ Section 147(3) of the Constitution of Federal Republic of Nigeria 1999

²⁵ Section 14(3) of the Constitution of Federal Republic of Nigeria 1999

²⁶ *Panya v President, FRN & Ors (2018) LPELR-44573(CA)*

²⁷ The High Court of the Federal Capital Territory, Abuja (Number of Judges) Act

²⁸ Constitution of Federal Republic of Nigeria 1999, *Marwa & Ors v Nyako v Ors (2012) LPELR-7837 (SC)*

²⁹ Section 3 (1) (2) of the Constitution of Federal Republic of Nigeria 1999

1 of the first schedule to the Constitution and six Area Councils as shown in Part II of that schedule³⁰. Each of these States of the Federation and the Local governments and Area Councils are made up of different ethnic groups and religions but were brought under the same nationality. To sustain true federalism, there is need for political restructuring. Most of these ethnic groups or regions are being marginalized politically, economically and fiscally. Most of the States of the Federation are naturally endowed more than others (for instance the oil producing States). The agitation by non-oil producing States on the derivation sharing formula has generated uproar, and this is calling for restructuring to tackle the agitation and to avoid violence and insecurities. Depending on the politics, geographical and ethnic origin, various stakeholders have adopted contending positions in the fiscal federalism debate in Nigeria. The Niger-Delta region of Nigeria, where the petroleum resources are obtained, are prone to using violence, if necessary, to resolve the fiscal federalism debacle and want absolute control 'or resource control' of the natural resources in their homelands with a willingness to pay appropriate taxes to the Federal Government³¹.

The awakening by the Niger Delta people and the consequent call for 50% derivation and or total resource control has set them on a war path with people and Governors of the Northern States. The current controversy between Northern Governors and their Southern counterparts, over how oil revenues accruing to the Nigeria should be shared has created a deep gulf in the ranks of the governors. The governors have been polarized under ethnic and regional lines over who gets what from the Federation Account. Political and opinion leaders across the polity have also joined the fray. Politicians in the nineteen (19) Northern States who want the derivation fund to be abolished or its percentage significantly reduced because its sustenance not only puts the North at a disadvantage but also poses danger for the part of the country where literacy, poverty, ignorance and general backwardness are much. The oil producing States, on the other hand are determined to fight back to protect their right and push for a progressive increase in the derivation formula up to fight 50 percent to cushion the impacts of years of marginalization and environmental degradation by the oil companies in the region. Political watchers fear that the oil producing states could revive the age long agitation for total resource control or demand a review of the current derivation formula from the current 13 percent to 50 percent³².

By the above opinion and agitation, it becomes imperative to say that restructuring is connected to political and structural inclusion of all Ethnic Nationalities in Nigeria. Unfortunately, all the revenue of fines generated in the state are to be paid into the Consolidated Fund Account, for derivative principle³³, this has made it impossible for the contention of the Niger Delta on the ownership of the revenue so generated. This also has made it more necessary for the restructuring to accommodate the states or the ethnic groups that are being marginalized. There is need for the States to utilize the revenue generated within to be able to meet up with the expenses of the State, since the law has made it that the States shall be responsible for the funding of any institution or commission or bodies created by any three tiers of government, and same cannot be funded from the Federation Account³⁴.

6. Contending Issues in Nigeria's Fiscal Federalism

Some of the contending issues or challenges facing fiscal federalism in Nigeria are discussed below:

Fiscal Decentralization

Financial responsibilities in a federal system of government like Nigeria are vested in all the tiers government, which has resulted to a decentralized fiscal federalism. Each of the tiers of the government has independent expenses to meet up with, and this gave credence to decentralized fiscal federalism in any true federal system of government. The Nigerian Constitution is in favor of centralization of fiscal powers, in that it vested all the powers to impose taxes and its administration on the federal government, leaving little or no taxing powers for the States and Local governments. The Federal government is equally in-charge of the Federation Account, making the States and the Local government dependent on the Federal government for their funding. In Nigeria, the question of 'who decides what and the percentage that goes to each tier of government from the Federation Account?' is not fully decentralised; much of it is still in the power of the federal government to decide. In a truly federal system, the member states have entrenched constitutional rights in decision-making powers on the allocation of revenue. But in Nigeria this is not entirely the

³⁰ Section 3 (6) of the Constitution of Federal Republic of Nigeria 1999

³¹E Obok, (2018). Implications of crude oil extraction on agriculture and livelihood in oil producing rural communities in Nigeria. *Review of agricultural and applied economics*, <https://www.academia.edu/74656125/Implications_of_Crude_Oil_Extraction_on_Agriculture_and_Livelihood_in_Oil_Producing_Rural_Communities_in_Nigeria> accessed on 7th day of December, 2023

³²OI Eme and N Anyadike, (2012). The North and the political economy of revenue allocation in Nigeria. Kuwait chapter of *Arabian Journal of Business and Management Review*, 1(8), 54-74. Retrieved from <www.arabianjbm.com>accessed on the 6th December, 2023.

³³ Section 121 of the Constitution of Federal Republic of Nigeria 1999

³⁴*AG Abia State & Ors v. AG Federation (2003) LPELR-610(SC) (Pp. 39-40 paras. E)* 'if any of the three tiers of Government decides to form, create or constitute new bodies, or things whatsoever, the tier and that tier of Government alone, must be prepared to fund such things or bodies from its own share of allocation and not any more directly from the Federation Account'

case. Fiscal decentralization has the tendencies of resolving the marginalization questions of various states and ethnic groups, as most of the States would employ their revenue generated in their states to the development of the state and bring government closer to the people. The fiscal decentralisation does not in any way exempt the federal government from giving specific grants to some States that are unable to meet up with their expenses from time to time. It may also be necessary that the Federation Account be abolished or expunged from the Constitution, thereby granting powers to the States and Local government to keep and manage the revenue generated from their States, and possibly paying a percentage to the federal government, maybe for the purpose of grant for the States they are unable to meet up with their fiscal responsibilities.

Functional and Tax-Raising Power in Nigeria's Federalism

The powers to raise or impose and collect taxes in Nigeria are constitutional. The power to legislate on revenue is traced to the implementation of the recommendations of the Sir Louis Chick Commission in 1955, wherein it was recommended that each of the regional legislatures should be given the powers to legislate on revenue matters within their region³⁵. The allocation of tax-raising powers or determining fiscal jurisdiction is essentially a legislative function. In Nigeria, the powers to impose taxes are vested in the National Assembly as can be seen in the Constitution. The powers of the States to impose taxes on the items as contained in the Concurrent Legislative List are a mirage by virtue of the doctrine of covering the field and inconsistency clause. All the laws regulating the imposition of taxes in Nigeria are Act of National Assembly. The Taxes and Levies (approved list for Collection) Act³⁶, only specified the taxes to be collected by each tier of the government. The power to collect tax is not synonymous with the power to impose tax. At the same time, the fact that an arm of government has power to collect tax does not make him the beneficiary of the said tax collected³⁷.

It was observed that in Nigeria, local government expenditure has constantly surpassed the potential for revenue sources owing to the great gulf between their needs and their fiscal capacity.³⁸ This has largely been caused by the incongruous nature of their revenue rights and fiscal jurisdiction with the duties and functions constitutionally allocated to them. All the taxes generated or collected by the State Board of Internal Revenue within each State are accounted for to the federal government, while the same State that generated the revenue will depend on the Federal Government for their funding under the derivative principles³⁹. By and large, the States and the Local Government lack the power to impose taxes and any revenue generated by the States or bodies created by them are to be paid into the Consolidated Revenue Account of the State and this gives credence to the huge fiscal dependence of the State and Local Government on the Federal Government for their funding from the Federation Account.

Measures Used in the Revenue Allocation Formula

One of the major challenges of fiscal federalism in Nigeria is the criteria or measures adopted by the federal government in the allocation or sharing of the revenue from the federation accounts amongst the States of the federation. A major area of contention and agitation among the sub national governments on the revenue sharing formula has been the manipulation of the area of advantage of each region or states. For example, engaging criteria such as landmass and terrain and allocation of high percentages to population can determine how much a state gets from oil revenue sharing, putting some states in a vantage position even though they make less contribution to the nation's revenue base, while others are disadvantaged in the areas of landmass and population but the resources come from their region: thus, the Niger Delta states contributes from 70% to 80% to the total revenue of Nigeria. These often constitute the primary source of conflicts and separatist agitations in Nigeria.⁴⁰ An accurate population census figure is needed to aid effective national planning to advance social, political and economic development, but unfortunately the reverse is the case in Nigeria, because the higher the declared population of a region the higher its access to oil revenue irrespective of whether the figures were fallacious or not.⁴¹ The assignment of a high percentage to population in determining horizontal revenue allocation to states led to the manipulation of the census figures in Nigeria by those holding political power, mostly military regime leaders, in favour of their regions, states and local government as the case may be, at the expense of the states where most of the oil revenue comes from. In order to bring adequate and corresponding development to each of the State Government, the indices or measure for the allocation of funds from the Federation Account should be restructured, by allowing each State utility of the revenue

³⁵A Adenike, 'Allocation of Taxing Power Under the Constitution of Federal Republic of Nigeria 1979' *the lawyer*, vol.15 1985, 60

³⁶ Chapter T2, Law of Federation of Nigeria 2004.

³⁷MN Umenweke, 'Tax Law and its Implications for foreign Investment in Nigeria' Nolix Educational Publication (Nig) Enugu 2008 p. 47

³⁸ST Akindele, and Olaopa (2002). 'Fiscal federalism and local Government Finance in Nigeria: An Examination of Revenue, Rights and Fiscal Jurisdiction' in *Contemporary Issues in Public Administration*. Omotoso, F. ed. Lagos: Bolabay Publications, pp.46-64

³⁹ Section 162 of the Constitution of Federal Republic of Nigeria 1999.

⁴⁰ LC Anyanwu, (1995), *Revenue Allocation and Stable Fiscal Federalism in Nigeria* at pp:24-25

⁴¹*Ibid*

generated while paying a percentage to the Federal Government to use in assisting the States that are unable to meet up with their fiscal responsibilities and functions.

Fiscal Autonomy and Independence

In Nigeria, the federating units is highly dependent on the Federal Government for their funding due to the fact that Nigeria constitutional operates fiscal centralisation against fiscal decentralization operational in a true federalism, as can be seen in the United States of America. The high level of dependence on the Federal Government by the States and Local Government has resulted in the marginalization of various ethnic groups and quest for restructuring to grant fiscal autonomy to the State of the Federation. The issue of relative fiscal autonomy and independence of the state and local governments in a true federal structure goes with the corollary issue of the correspondence of governmental functions and revenue sources. Since the creation of the twelve-state structure in 1967, states and local governments have been excessively dependent on the Federation Account. This independence must be reduced if the federating units are to be free to pursue their own development goals without being hampered by the unpredictable fluctuations in their shares of the Federation Account. It is important that revenue sources should be reallocated and made compatible with the fluctuations stated for each tier of government to enhance steady and proper funding of administrative and developmental activities instead of the often-experienced unexpected financial constrictions at the two lower tiers of government. It was in line with the above position that the Confab 2014 recommended for the creation of more 18 States to bring government closer to people, that each State of the Federation shall have a revenue sharing formula, constitution and right to self-determination. The grant of power to the State Governments to impose, collect and apply taxes or revenue generated will make each State fiscally autonomous and reduce the level of dependence on the Federal Government.

Local Governments Tax Powers and Revenue Rights

The existence of Local Government is guaranteed by the 1999 Constitution of Federal Republic of Nigeria Section 7(1), while the creation of the Local Government is to be made by the State Government⁴². The Local Government under the 1999 Constitution of Federal Republic of Nigeria, does not have power to impose taxes nor generate revenue, however, the Constitution made provision for the funding of the Local Government from the State Joint Local Government Account⁴³. The State Government are to pay to the Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as maybe prescribed by the National Assembly, and any amount standing to the credit of the Local Government Council of the State shall be distributed to the local government on such terms as maybe determined by the State House of Assembly⁴⁴. It is deducible that the above provision of the Constitution placed the Local Government under the financial control and mercies of the State Government. The Constitution divided the legislative powers between the National Assembly and the State Houses of Assembly only, no legislative powers were constitutionally granted to the Local Government⁴⁵. This Position was affirmed by the Supreme Court in *Balogun v AG Lagos State & Ors*⁴⁶, holding that the Local Government in Nigeria has no constitutional powers with respect to the establishment, structure, composition, finance and function of local government council, rather it is the State. The inability of local governments to raise substantial portions of their total recurrent revenue requirements from internal sources has of course become common-place knowledge. Reasons for this have ranged from the very narrow revenue base imposed on the local governments by the statutory distribution of tax powers to the continuous infringement on their revenue rights by the state governments in particular.

Revenue Structure and Fiscal Dependence

One major problem of fiscal federalism is the revenue structure. Nigeria as a federation has always depended highly on one particular revenue source at a time; it has issue of diversification of the revenue source. After the pre-independence era of massive dependence on agricultural produce, export duties and marketing board surplus funds, there was a worse oil revenue dependence syndrome which destroyed other sectors.⁴⁷ Between 1980 and 2004, revenue from oil sources, comprising petroleum profit tax, oil royalty, rent, NNPC joint-venture profit, and licence fees, jointly accounted for 74.1 per cent of the average share of total federally collected revenue. This high dependency on oil only is dangerous to the economy of Nigeria for some important reasons. First, the oil industry, though a dynamic sector in the Nigerian economy with an average GDP share of 33.5 per cent from 1980 to 2007, sustains about 1.00 per cent of total employment in Nigeria during the period. Again, the sector has very low linkage effect on the rest of the economy because its output is mostly exported as crude oil without any manufacturing linkage.

⁴²SC Ugwu, *Issues in Local Government and Urban Administration in Nigeria* (Enugu Publishing co, 2003)

⁴³ Section 162(6) of the Constitution of Federal Republic of Nigeria 1999

⁴⁴ Section 162(5) and (7) of the Constitution of Federal Republic of Nigeria 1999.

⁴⁵Section 4 of the Constitution of Federal Republic of Nigeria 1999.

⁴⁶ (1981) 1 NCLR 31

⁴⁷OO Ewetan (2012), 'Fiscal federalism in Nigeria: Theory and practice, *International Journal of Development and Sustainability Online ISSN: 2168-8662– www.isdsnet.com/ijds* Volume 1 Number 3: Pages 1075-1087

As a result, petroleum activities have generated low linkage revenue for government from other sectors. Second, consequent upon the exportation of crude oil, with a small margin (only 18.9 per cent of crude oil produced between 1980 and 2007) reserved for domestic use, the economy has continued to suffer from shocks from the international oil market. This has been demonstrated by several market shocks and policy changes following oil price falls.⁴⁸ It is obvious as stated this work that most of the non-oil producing States and the oil producing States are raising agitations on who gets what from the revenue generated from this oil. The high dependency on the oil as the sole source of revenue in Nigeria needs a review. Nigeria cannot operate fiscal independence of the States and Local Government by depending only on oil. There is need for diversification of source of revenue, so that the non-oil producing States can still have a source known to the federal government through which revenue is generated for their funding.

7. Conclusion

The crux of the quest for restructuring and fiscal federalism in Nigeria is the agitation for the resource control and or fiscal autonomy or independence of the three tiers of Government, as obtainable in a true federalism. It is discovered that the Constitution of Federal Republic of Nigeria 1999 is enacted in such a nature that the Federal Government has control of the revenue generated by the federating units. The formula for the sharing of revenue in the Federation Account is left at the whims and caprices of the President and National Assembly to determining. Most of the oil States are laying claim for the ownership of the revenue generated from oil in their State. The formula for the distribution of the derivative revenue was based on population and land mass among other factors which the indices have been adjudged to be prejudicial to the interest of many states especially the states that generated the bulk revenue but has smaller land mass or and population. Most of the political elites try to escalate the population of their States so as to get larger funding from the federal government. The controversies generated by this sharing formula has giving rise to the marginalization of some groups and agitation for restructuring from the said group/ethnic group. The State and Local Governments lack financial autonomy and they are highly dependent on the Federal Government for their funding, as a result of the fiscal centralization created by the Constitution. The employment and appointment of minister are politically motivated and they are not in conformity with the principles of federal character as provided in section 14(3) of the constitution of Federal Republic of Nigeria 1999, the lack of complies to the federal character in the appointments are part of the agitation for restructuring for inclusive government. The United States of America operates decentralized fiscal federalism which is adjudged to be the true fiscal federalism. The United States Constitution granted financial autonomy to all the 50 States and local Governments. The States and Local Governments in United States of America can validity impose and collect taxes they impose and apply same to development of the State. The federal Government in the United States also from time to time make special grants to States and local governments that are unable to meet with their fiscal obligation in the spirit of restructuring and fiscal autonomy of the state and local Government. Nigeria in theory is a federation having federating units. The Federating Units in a true federalism are coordinate and not subordinated to the Federal Government as obtainable in Nigeria. That is to say, Nigeria does not operate true federalism by the number of factors stated above. In a true federalism, the federating units are not subordinate nor depend on the Federal Government for their funding and discharge of their responsibilities, rather they are fiscally autonomous and independent from the federal government, and major source of revenue are left for the federating units to generate funds and fund their responsibilities and expenses. Legally speaking, the clamor for restructuring and fiscal federalism will best be achieved through devolution of powers and decentralization of revenue to the tiers of the government.

⁴⁸Ibid