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FEDERALISM, FISCAL AUTONOMY AND RURAL DEVELOPMENT

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Abstract
This study examines the causal relationship between Federalism, Fiscal Autonomy and Rural Development by showing that fiscal autonomy is very important in a federal state as it gives each of the federating units' solid financial base to be able to carry out its functions. By this, the study appraises the legal framework for local government system in Nigeria in order to see to what extent do the local government as a tier of government have the legal power to enact its tax laws in order to generate revenues for rural development. The research method used is doctrinal. The theoretical model adopted for this study is the K.C. Wheare's theory of Federalism. The utility of this theory to the study is that Wheare emphasizes the need for each level of government to have adequate resources to perform its functions without appealing to the other level of government. The findings from the study reveals among other things that Local Government Councils have no powers under the constitution to enact tax laws but only have powers to collect taxes as shown in column 3 of the Tax Act Cap 37 Law of the Federation 2004. In most cases the State Government use their agencies to collect taxes meant for the local government and do not remit such money to the local government councils. That even though the 1999 CFRN appears to have laid the Foundation for fiscal autonomy of the three tiers of government, in actual practice, there appears to be no fiscal autonomy. The study therefore recommends among other things, the amendment of Sections 4 and 162 of the 1999 CFRN to recognise the Local Government Council by giving the council the legislative powers to make laws to generate taxes and funds to run the councils.

Keywords: Federalism, Fiscal Autonomy, Fiscal Federalism, Rural Development.

INTRODUCTION

In the current contemporary international system, there are various or different kinds of political administration, all geared towards having a peaceful-cum-just society for the benefit of mankind. Some countries are more or less composed of people from the same tribe or ethnic nationality such as Israel, New Zealand, Saudi Arabia and Niger – just to mention a few, while others are made up of different ethnic nationalities with different cultural and linguistic colorations such as Nigeria, Canada, Australia, Malaysia and India. Today, there are still sovereign states under the leadership of Kings who are in charge of strong central governments like Saudi Arabia, Moroco and Lebanon, while others are countries with government elected by the people who are the heads of their countries under a strong central government otherwise called a Unitary system. In others, we have popularly elected leaders who are in charge of their states under a central government which shares power with other political leaders in charge of the component states known as Federal System like the United States, Nigeria.

In A.G. Abia State v. A.G. Federation, the Supreme Court define Federation as an arrangement whereby political powers within a country are divided between a national country wide government (i.e. central government) and a number of regionalised territorially localised government (i.e. State or Provincial Government) in such a way that each exist as a government separately from others operating directly on persons and properties within its territorial jurisdiction with a will of its own and its own apparatus for the conduct of its affairs and within an authority on some matters exclusive of all others.

From the above judicial pronouncement, it can be argued that there are certain objective features that are central to the principles of federalism (example like Nigeria):

(a) National government at the centre;
(b) State governments as the component of the centre;
(c) Local government council as a sub-unit with no clear cut powers as a Federating unit;
(d) A National Assembly legislating for the peace, law and order of the Federation and with respect to enumerated matters in the exclusive legislative list while the House of Assembly legislate for the States.
(e) In certain matters, the Federal and State exercises powers in the concurrent legislative list with the former overriding the later in the case of any conflict;
(f) Matters not enumerated for the Federation or contemporaneous between the Federation and the State are reserved for the State.
(g) A Supreme Court exist to settle disputes between the Federation and the States.
(h) A cumbersome process of amending the constitution exist. The above elements clearly show the existence of the Federal System in Nigeria (Dadem, 2004). Nigeria in 1960 was a Federation of three regions, later Four regions in 1963 and twelve states in 1967 and thereafter thirty-six (36) under the 1999 CFRN (as amended) (see S3(1) CFRN).

In the case of legislative powers, in the Executive Legislative list, the powers thereto are exclusive to the Federal Government (see Section 4 and 2nd Schedule to the 1999 CFRN (as amended)). Under the concurrent legislative list, the powers are shared between the Federal Government and State Governments. However, if any law made by the House of Assembly of a State conflicts with any law validly made by the National Assembly in the concurrent Legislative list, the law made by the National Assembly will prevail and render that made by the State House of Assembly a null and void (see Section 4(5) 1999 CFRN). The above proposition shows what in constitutional law is referred to as the "Doctrine of covering the Field". However, where the state legislation is the same as the one enacted by the Federal Government (i.e the two legislation are in pari-material) it is argued that the state legislation is not void but in abeyance and in-operative for the period the Federal Legislation is in force (see Ogun State Government v. FRN). If for any reason, the Federal legislation is repealed, it is argued that the state legislation shall came into force until there is another federal legislation on the same field.

Interestingly, Duru (2001) defines Fiscal Autonomy as a State of making Local governance to have distinct territorial boundary, legal powers to do or achieve specific goal and most importantly, enjoy substantial autonomy in Financial matters without excessive but complementary control by higher authority. For him, this includes, owning of treasury, separate budgets, and accounts based on effective reliable income generation from within and outside its domain. Imhan Lahimi (2011) corroborates Duru's position by arguing that Fiscal Autonomy especially at the local government level is generally believed to be the best tool for effective and efficient service delivery in rural areas of federated countries like Nigeria. The provisions for autonomy, as they were, are essentially aimed at protecting the local from superfluous interference from other tiers of government and to enable it play significant roles in national development process. From the arguments above, Fiscal Autonomy is nothing but Financial equity or Financial independence among the federation units.

Closely related to financial autonomy is the concept of development. The term "Development" as used in contemporary social science literature is not only vague and nebulous, but is also polemical. For instance, Ekpe and Okereke (2002) argue that the use of such terms as "growth" "change" and in some instances "industrialization" interchangeably with Development, tends to complicate the problem of arriving at a universally acceptable definition for the term. For them, the consensus among liberal scholars is that Development means the capacity of a national economy, whose initial economic condition has been more or less static to generate and sustain an annual increase in its Gross National Product (GNP). From this standpoint, development implies the qualitative and quantitative change, not only in the standard of living of the members of the society but also the transformation of the society, in all its ramifications.

By extension, Rural Development revolves around the attempt by governments and groups of people to address the basic problems bedevilling the rural areas in respect of basic socio-economic needs such as safe drinking water, primary health care, Feeder road, electricity and schools. Arising from the above, rural development can be defined as restructuring of the economy in order to satisfy the needs and aspirations of the rural masses. It is the specific strategy designed for the overall improvement of the economic and social conditions of the rural dwellers.

The objective of this study is to appraise the legal framework for local government system in Nigeria to see to what extent do the local government as a tier of government have the legal powers to tax in order to generate revenue for rural development. This is based on the proposition that tax sharing among the various levels of government could provide a feasible solution to the lack of basic amenities and rural development in various communities as the more fund a tier of government closer to the people has, the more amenities and dividends of democracy it may be able to provide to the people.

THEORETICAL EXPLICATION OF THE DISCOURSE

The theoretical approach adopted in this analysis is the K.C. Wheare's theory of Federalism. Federalism, according to Wheare (1963), is the method of dividing powers so that the central and regional governments are each, within a sphere, co-ordinate and independent. The characteristics of this Federal principle are the division of powers among levels of government, a written constitution showing this division of powers and co-ordinate not subordinate supremacy of the two levels of government with respect to their functions. Put differently, it is that constitutional arrangement which divides law making powers and functions of the state between two levels of government which are co-ordinate in status. For Wheare, a system can only be said to be Federal, if there is a division of powers between one general and several regional governments and each must be limited to its own sphere of action; and each within that sphere be independent of the others.

A careful appraisal of Wheare's argument, shows the following as his major assumptions:

(a) that under a Federal system, the general (i.e. central) and regional government each has an autonomous sphere of power that can be exercised independently of the other level;
(b) the powers of the central government are exercised directly over individual citizens rather than indirectly through states or provinces; and
(c) in the event that the central government does not have power to regulate citizens directly, the form of government would be confederal rather than Federal.

For the purpose of the study, other assumptions inferred from Wheare argument are:

(a) That in a Federal System, legislative powers are distributed between the central and regional governments;

(b) The powers of the central and regional government are not subject to change by the other level of government; and
(c) Individual citizens are subject to laws enacted by both the central and regional governments.

The practice of Federalism in Nigeria is one of the legacies the British Colonial Masters bequeathed to Nigeria. Local Government is born out of Federalism because federalism has to do with the division of powers between the central and component units. Local government is a component in a federal system, it is recognised as a third tier of government which is charged with the responsibility at the grass root.

The utility of the approach to the study is that Wheare emphasizes the need for each level of government to have adequate resources to perform its functions without appealing to the other levels of government. He further argues that if the component government in a federation discovers that the services given to them are too expensive for them to perform and call on the Federal government for assistance, they are no longer co-ordinate to the federal government, but subordinate to it, and when this happens, Federalism ceases to exist.

Although Wheare's theory has been criticised as being unduly legalistic or as placing undue stress on the separateness of the central and regional authorities, it has provided a basis for distinguishing the federal from other forms of government and therefore remains the classic definition of true Federalism.

LOCAL GOVERNMENT AND THE LEGAL POWERS TO EXTRACT TAX

In Yantaba v. Governor of Katsina State, the Supreme Court as per justice Okoro held that the Federal Republic of Nigeria is a three tier Federal System constituting of the Federal Government, State government and the Local government. This implies that each of the tiers of government is co-ordinate and independent in its limited sphere of authority and should also have appropriate taxing powers to exploit its independent sources of revenue. Accordingly, **Section 3(1) 1999 CFRN** (as amended) listed the thirty-six states in Nigeria as shown in the first schedule to part one of the said constitution. Section 3(2) of the said constitution provides as follows:

Each state of Nigeria named in the first schedule to this constitution shall consist of the area shown opposite thereto in the second column of that schedule.

Section 3(6) of the constitution provides a follows:

There shall be seven hundred and sixty-eight local governments in Nigeria as shown in the second column of Part 2 of that schedule.

Section 4(1) of the constitution provides thus:

The legislative power of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representative.

Section 4(2) provides that:

The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any Part thereof with respect to any matter included in the Executive Legislative list set out in Part 1 of the Second Schedule to this constitution.

Section 4(4) of the constitution provides thus:

In addition, and without prejudice to the powers conferred by Subsection (2) of this Section, the National Assembly shall have power to make laws with respect to the following matters, that is to say,

(a) Any matter in the concurrent legislative list set out in the first column of Part II of the Second Schedule to this constitution to the extent prescribed in the Second Column opposite thereto; and
(b) Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

Section 4(5) provides thus:

If any law enacted by the House of Assembly of a state is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void.

Section 4(6) of the constitution provides that:

The legislative powers of a state of the Federation shall be vested in the House of Assembly.

Section 4(7) provides:

The House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect to the following matters, that is to say-

(a) Any matter not included in the Exclusive Legislative list set out in Part I of the Second Schedule to this constitution.
(b) Any matter included in the concurrent legislative list set out in the first column of Part II of the Second Schedule to this constitution to the extent prescribed in the Second Column opposite thereto.

As stated earlier, Section 3(6) 1999 CFRN provides for local government in Nigeria, while Section 7(1) 1999 CFRN (as amended) explicitly guaranteed the existence of local government council. The Fourth Schedule to the 1999 CFRN, made copious provisions for the functions to be performed by the local government councils. However, unlike the case of the Federal Government and State government where the constitution expressly donated legislative powers to the said tiers of government, the constitution did not give law making powers to the local government councils. Thus, it is the State House of Assembly that has the constitutional powers to legislate for the local governments (see Section 4(6)(7) 1999 CFRN, Oluwabukola v. A.G. Lagos State). Accordingly, the state is empowered under item 9 of the concurrent legislative list of the constitution to make law for the collection of any tax, fee or rate or for the administration of law providing for such collection by a local government council.

The Local government was supposed to be given the power in the constitution to have access and control of its own sufficient financial resources by donating to the local government the power to tax and to borrow for the financing of its own services by itself without relying on the other. This is because taxation is the primary and the most ancient source of government revenue. Taxation plays an important and established role in any economy and it would not be out of place to say that there is no government today that does not rely on taxation measures to provide the much needed revenue for socio-economic development. It appears that the makers of the constitution from the beginning set out to sabotage the local government system. This is so because by denying the local government councils the power to enact its tax laws and not providing for the direct allocation of revenue from the Federation account to the local government councils, but to the state government, the councils were directly placed under the control of the state governments. This is why in most cases; the state governments make tax law to hijack taxes meant for the local government councils (see Oluwabukola v. A.G. Lagos).

It therefore follows that the number of taxes that are collected by the local government are prescribed by the various state laws. Thus, the local government does not have powers to legislate on tax matters under the constitution. However, the constitution conferred functions on the local government council including participation of the council in the government of the state with respect to the following matters:

a) The provision and maintenance of primary, adult and vocational education.
b) The development of agriculture and natural resources other than the exploitation of minerals.
c) The provisions and maintenance of health services and
d) Such other functions as may be conferred on a local government council by the House of Assembly.

Deductively, therefore, the functions of local government with regard to tax are those enumerated in item 1 and 2(a) (b) and (c) of the Fourth Schedule to the constitution and other functions the State House of Assembly shall confer on it (Faga, 2012). The taxes and levies (Approved list for collection) Act also made provisions as regard to the taxes collectible by the three tiers of government which the items of taxes collectible by the local government was clearly specified.

Aside the provisions x-rayed above, the 1999 constitution of the Federal Republic of Nigeria (as amended) also made provision to the way and manner revenue derived in the Federal Republic of Nigeria shall be distributed to the three tiers of government. For instance, Section 162(1) of the constitution provides as follows:

The Federation shall maintain a special account o be called "The Federation Account" which shall be paid all revenue collected by the government of the Federation.

Section 162(3) of the constitution provides as follows:

Any amount standing to the credit of the Federation account shall be distributed among the Federal and State government and the local government councils in each state on such terms an in such manner as may be prescribed by the National Assembly.

Section 162(4) provides:

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.

Section 162(5) provides:

The amount standing to the Credit of the Local government council in the Federation Account shall also be allocated to the states for the benefit of their local government council on such terms and in such manner as may be prescribed by the National Assembly.

In AG Federation v. A.G. Abia State, the Supreme Court held on the proper mode of distribution of funds accruing to the Federation account.

The principle of fiscal autonomy and fiscal Federalism is a condition precedent for the survival and continued existence of a truly Federal System of government. That is each level of government, federal, state and local must necessarily have a minimum source of independent revenue and full control of such revenue for the discharge of its constitutional responsibilities. This is because, the greater the fiscal autonomy through internally generated revenue amongst the component states, the stronger the foundation of the Federal System and by extension the greater the chances of survival and continued existence of the Federal system. It is therefore essential that each unit of the government in the Federation must not only have identifiable independent sources of revenue but that such independent sources should to a large extent provide a solid base for its revenue need and economic potentialities.

Local government councils are the nearest tier of government to the people in the rural areas, and for this reason, for there to be economic development, it must have sufficient finance or fund to provide rural development at the grassroot level or areas. Unfortunately, the local government councils has no independent financial base. This is so partly because the main source of fund being allocation from the Federation Account is not paid directly to the local government but to the state government which in most cases do not allow the local government to have access to all their allocation. By this, the local government councils are starved of important funds needed for the development of the rural communities. Furthermore, the local government councils have no powers under the constitution to enact tax laws but only have powers to collect taxes as shown in column 3 of the Tax Act Cap 37 Law of the Federation 2004. In most cases the state government use their agencies to collect taxes meant for the local government and do not remit such money to the local government councils.

CONCLUSION

This study examined the causal relationship between Federalism, fiscal autonomy and rural development by showing that fiscal autonomy is very important in a federal state as it intends to give each of the Federating units solid financial base to be able to carry out its functions. The study also shows that in Nigeria there is no fiscal autonomy in practice as the Federal government is in complete and total control of fiscal measures. The worst affected tier of government which has no direct access to its own share of federation account and the constitutional powers to enact its tax laws in other to provide the much needed revenue for social economic development is the local government. The study has equally shown that because of the inability of the local government councils to have funds, the rural part of Nigeria has not developed as the government closest to it, being the local government councils, have no funds to embark on rural development.

The way forward is that the study suggests the amendment of Sections 4 and 162 of the 1999 Constitution of the Federal Republic of Nigeria (CFRN) (as amended) to recognise the local government council by giving the councils the Legislative Powers to make tax laws to generate taxes and fund to run the councils. Also Section 162(6) of the constitution should be amended to make direct allocation of all money standing to the credit of local government to be paid directly to the Local Government Council. In addition to Section 162(7) of the constitution should be amended to direct each state to pay specific percentage of its internally generated revenue to the local government council.

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