

# Politics of Revenue Allocation in Nigeria: Paths Not Taken, Issues Not Resolved by the National Political Reform Conference (Nprc)

Dr. Chibueze C. Ikeji<sup>1</sup> Utulu Paul Benedict<sup>1</sup> Edem Ebong<sup>1</sup> Theophilus Oyime Adejumo<sup>2</sup>

1. Institute of Public Policy and Administration (Ippa), University of Calabar Nigeria

E-mail: chubby.ikeji@yahoo.com

2. Department of political science, university of Calabar, email: theophilusoyime@yahoo.com

## Abstract

Unquestionably one of the most controversial issues in Nigeria's political history – Revenue Allocation/Fiscal Federalism – saga expectedly reared its unyielding head in the National Political Reform Conference (NPRC) held at Abuja (nation's capital city) between February and June 2006. Memoranda on Revenue Allocation and Fiscal Federalism came under the NPRC's working platform called "Reforms of the structure of Government and Governance". Among major contentious issues contained in the Terms of Reference (TOR) adopted by the NPRC's Committee on Revenue Allocation and Fiscal Federalism (and debated by NPRC) are: the separation of Office of Accountant-General of the Federation (AGF) from Office of Accountant-General of Federal Government (AGFG); illegal withholding of accruals by some agencies of the Federal Government; inventing generally acceptable Revenue Allocation Principles and Formula; Joint State/Local Government Account; and the establishing of Independent Mechanism for Period Review of matters relating to Revenue Allocation. How far were these and other concomitant issues addressed by the NPRC? To what extent was the path of consensual (in contrast to antagonistic) politics explored in dealing with these issues? To what extent were the recurrent controversies surrounding Revenue Allocation in Nigeria resolved? How far did NPRC go in dealing with the deep-rooted contradictions associated with Nigeria's peculiar answers to these questions was the main task of this paper. In the face of evidence before us, the paper argues that, by not taking some critical paths, in dealing with the question of Revenue Allocation in Nigeria, the NPRC culpably left many important issues unresolved. Thus, the cause of advancing the nation has not been served as far as the politics of Revenue Allocation is concerned.

## Introduction

Revenue allocation and fiscal federalism – the whole question of "how national revenues are generated and spent" or "the power both to raise revenues through taxation and to spend money through appropriations" in a federation – have been contentious issues with pervasive manifestations on inter-governmental and inter-regional relations which even pre-date Nigeria's independence. The evolution of Nigeria as an independent sovereign state is often traced to the artificial political unification of the North and the South – the 1914 amalgamation of the Protectorate of Northern Nigeria and the colony and Protectorate of Southern Nigeria – a process that was influenced more by economic imperatives than by political and administrative expediency, as the relatively less endowed North persistently recorded budget deficits in counter-distinction to the more buoyant South which consistently recorded budget surpluses (Phillipson, 1948; Adedeji, 1969; Okigbo, 1965; Egwaikhide and Ekpo, 2005). As the Colonial Intelligence Report succinctly observed, "The anomaly was presented of a country with an aggregate revenue practically equal to its needs but divided into two by an arbitrary line of latitude" (cited by Douglas in *The Emperor Has No Clothes*, 2000:140). It is on record that before the 1914 Amalgamation, Northern Nigeria survived on grants-in-aid from the British treasury on the £3,760,830. In terms of financial consideration, the British Colonial Administration therefore settled for amalgamation based on the logic "that if we lump together the prosperous Southern and the struggling Northern Protectorates, the result will be to diminish the burden on the British treasury" (cited by Martins in *The Emperor Has No Clothes*, 2000: 204).

Although in the process of nation-building, there seems to be a broad consensus that federalism is the best form of government for a plural or heterogeneous society like Nigeria, the appropriate form which Nigeria's federal structure should take, particularly with respect to the distribution and management of resources has remained controversial and contentious. Controversy over fiscal federalism has been exacerbated by the new phenomenon by which, since the 1973/1974 crude oil windfall following the Arab Oil Embargo, oil revenue has come to dominate total revenue accruing to the Federation Account, although successive military administrations have progressively de-emphasized the percentage assigned to the principle of derivation, with the result that the oil-producing States and communities, deprived from revenues from their God-given but depletable resource have nursed deep-seated feelings of dissatisfaction, disinheritance and disillusionment. It was thus expected,

with Nigeria's return to democratic governance in 1999, that an appropriate arrangement for fiscal federalism would emerge to correct the perceived injustice, equity and other problems associated with inter-governmental fiscal relations in the Nigerian Federation. One undeniable fact remains that the political economy of revenue allocation in Nigeria since the 1970s has come to be dominated by oil politics which in a macro sense, has been accentuated by the North-South dichotomy, and in a micro sense, by the dichotomy between oil-producing and non-oil producing States and communities. Admittedly, therefore, oil is now at the center of both political and revenue allocation in Nigeria, for, as one analyst bluntly put it,

*to talk about the Nigerian economy is to talk about the pumping of crude oil, the sale of crude oil, the allocation of revenue (accruing) from crude oil and the embezzlement and wastage of crude oil money. To talk about Nigerian politics is to talk about the control of oil money and the allocation of revenue (The Guardian (Sunday), 10 October 2004:37).*

According to another scholar,

*... oil is an object of the struggles between classes, factions and classes acting either through state structures, or ethnic identity groups. Since oil is power and power is oil in the context of Nigeria's political economy, the struggle for oil power becomes a primary object of politics and the inequitable distribution of oil highlights existing inequalities, competing claims, grievances and even conflicts, which conspire to threaten federal foundations of the Northern State (Obi in Onwudiwe and Subenu, 2005:195).*

Little wonder then that a vibrant newspaper columnist, Eddy Okonta, had lamented that "The State (Nigeria) is still an arena of vicious contest for the oil of the people of the Niger Delta" (The Week, 29 July 2002:5).

Public despondency and disenchantment with fiscal federalism and revenue allocation during Obasanjo's democratic dispensation has been vividly captured by Governor Bola Tinubu of Lagos State during the Lagos State First House of Assembly Inter-Governmental Quarterly Roundtable on Development when he lamented:

*we continue to operate a revenue allocation formula that reflects a unitary rather than a federal constitution. The revenue formula continues to support an over-centralized and an over-extended center while denying the levels of government closest to the people sufficient resources to meet their responsibilities.*

In the view of Governor Tinubu, such over-centralization has given rise to "militant agitation in the Niger Delta, sharpening restiveness in the South-East, a widespread feeling of despondency in the South-West and accumulating frustration in the Far North and Middle Belt (such that) nobody is satisfied with Nigeria as presently constituted and managed (Tinubu, 2004:9).

Revenue sharing and revenue allocation formula to be institutionalized therefore qualified as key issues to be adumbrated upon by Obasanjo's National Political Reform Conference (NPRC), which took place at Abuja between February and June 2006. The NPRC called for memoranda essentially in nine key areas of reforms, namely: Constitutional, Political Party, Electoral, Legal/Judicial, Police/Prison system and Civil Society reforms, as well as consultations and consensus-building, reforms of the structure of government and governance, and any other issue. Memoranda on Revenue Allocation and Fiscal Federalism fell under Reforms of the Structure of Government and Governance (Vanguard, 22 March 2005:13). However, only over two issues the principled demand of the South-South for increased derivation – fiscal federalism and, ultimately, Resource Control; and differences over the official request for the extension of the tenure of the present Government (a 6-year tenure elongation for the President) which originated from reforms of the structure of government and governance, was their lack of agreement, as against 185 issues on which the delegates managed to reach a consensus.

The principal concern of this paper is to conduct discussion along four most contentious of the six Terms of Reference (TOR) adopted by the Committee on Revenue Allocation and Fiscal Federalism, and debated by the NPRC namely: the Separation of Office of Accountant-General of the Federation (AGF) from office of Accountant-General of the Federal Government (AGFG); Revenue Allocation Principles and Formulae (which dominated the work of the NPRC); Joint State/Local Government Account and the Establishment of Independent Mechanism for periodic review. Six issues not resolved are then discussed before the Conclusion.

### **Terms of Reference of Revenue Allocation Committee**

The main work on revenue allocation and fiscal federalism was carried out by one of the 19 Committees constituted by the NPRC, the 23-member Committee on Revenue Allocation and Fiscal Federalism under the chairmanship of Chief Afe Babalola (SAN), with General Abdullahi B. Mamman (rtd) as deputy chairman, although broad-based deliberation and final decisions took place at the plenary of the NPRC. The committee had six specific terms of reference (TOR). The two issues discussed under TOR 1 on "Separation of the Office of the Accountant-General of the Federation (AGF) from that of the Accountant-General of the Federal Government (AGFG)" were (i) whether or not there is need to create another office in addition to the office of the present

office of the AGF; and (ii) whether or not to retain the present office of AGF and empower the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) to monitor it as an independent body.

TOR 2 on “principles and formula for distribution of Federation Account to the federal, state and local governments” mandated the committee to discuss whether or not the existing formulae for the distribution of the Federation Account to the respective tiers of government are adequate or should be reviewed; whether the principle of derivation should be given greater prominence than as at present in the distribution of the Federation Account; to determine the extent or what percentage of the derivation to be applied in sharing revenues accruing to the federation; whether or not states should continue to be entitled to derivation from offshore resources; whether or not the derivation principle should be applicable to all revenues accruable to the Federation Account; and whether or not there should be Special Fund for ecological, natural and man-made disasters, and if so, what the percentage should be.

The five questions that were to be addressed under TOR 3 on “Joint State and Local Government Joint Account were (i) whether or not to scrap the State/Local Government Joint Account; (ii) whether or not Local Governments’ funds from the Federation Account should go to the States directly, or to the State/Local Government Joint Account; (iii) whether or not Local Governments should be considered at all in the allocation of the Federation Account; (iv) whether or not the number of Local Government should continue to be the basis for allocation of revenue from the Federation Account; and (v) whether or not the same criteria/indices for Revenue Allocation among the States should apply for allocation of revenue among the Local Governments in a State.

Under TOR 4, dealing with “The Establishment of an Independent Mechanism for the Periodic Review of Allocation Formula”, the Committee was mandated to discuss and advise on whether or not the RMAFC should be strengthened for the periodic review and monitoring of resources; and whether or not there should be an independent mechanism for the periodic review in addition to the RMAFC.

Discussion on TOR 5 pertaining to the “Sharing of Powers of Taxation amongst the Federal, State and Local Governments” was expected to revolve around (i) whether or not the present legislation, administration and beneficiaries as specified in existing tax laws are satisfactory; (ii) whether or not the Joint Tax Board should be enshrined in the Constitution or left as it is; and (iii) identify how the incidence of multiple taxation could be dealt with.

Under TOR 6 on “Functions of Local Governments and distribution of powers of taxation among federal, state and local governments”, the only issue available for discussion was whether or not the powers of taxation of Local Governments as presently constituted was satisfactory. The only additional issue the Committee considered pertained to whether or not the Judiciary should continue to be funded from the Consolidated Revenue Fund (Report of Revenue Allocation and Fiscal Federalism Committee, 2005:4-7).

Generally deliberations by the Committee took cognizance of the historical context of, and background to, revenue allocation and fiscal federalism in Nigeria’s First Republic and when the derivation principle attracted a substantial percentage in revenue allocation under military dictatorship when the derivation principle was relegated to the background. The real challenge both in the Revenue Allocation and Fiscal Federalism Committee and in the Plenary of the NPRC has been how to fashion and design a national and equitable fiscal arrangement that would satisfy the yearnings and aspirations of all stakeholders, particularly given the intense agitation from the South-South for Resource Control and/or substantial increase in percentage derivation and the countervailing arguments by the “Anti-Resource Control Field Marshals” and “Anti-Derivationists”, so that its implementation would usher in peace, unity, progress, equity, justice and harmony among the mosaic that makes up the Nigerian Federation.

### **PATH NOT TAKEN I: Separation of Office of Accountant-General of the Federation from Account-General of Federal Government**

The separation (or creation) of these two offices, which has been a persistent demand of State Governments, was not endorsed by the NPRC, despite strong arguments to warrant it. The federal government has vehemently opposed the separation of the office of Accountant-General for the demand is not far to seek. The present Accountant-General of the Federation (AGF), being a federal civil servant, is an employee of the Federal Government and therefore loyal to the federal government. Yet, AGF is constitutionally charged with the collation and custody of funds going into the Federation Account, the beneficiaries of which not only include the federal government but also the state and local government. The position of the AGF who doubled in one fell swoop as the Accountant-General of the Federation and Accountant-General of the Federal Government has generated conflict of interest in which States and Local Governments have nursed genuine fears and apprehensions that their interests have been sacrificed or jeopardized to those of the Federal Government. Section 162(1) of the 1999 CFRN stipulates 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 of 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 the responsibility for Foreign Affairs and the resident of the Federal Capital Territory Abuja. (2).*

Section 162(3) provides that any amount standing to the credit of the Federation Account shall be distributed among the Federal, State and Local Governments “on such terms and manner as may be prescribed by the National Assembly”.

Over the years, there have been persistent allegations by the state and local governments about the apparent lack of transparency, objectivity and fairness in the custody, allocation and distribution of funds accruing to the Federation Account to the respective beneficiaries (federal, state and local governments). That lack of transparency on the part of the federal government has characterized the management, allocation and distribution of monies accruable to the Federation Account is demonstrable from (i) the illegal withdrawals by the Federal Government from Excess Crude Oil Proceeds; and (i) illegal withholding by NNPC of accruals to the Federation Account. These will be briefly discussed *seriatim*.

### **PATH NOT TAKEN II: Illegal Withdrawal from Excess Crude Account**

The phenomenon of illegal withdrawal by the federal government from excess crude account was not addressed by NPRC. In recent times, facts have emerged regarding the propensity of the federal government during the present dispensation to dip its hands into the excess crude oil sales account and to use same as it pleases on sundry matters before the left over is allocated among tiers of government in contravention of the clear stipulation of Section 162(3) of the 1999 CFRN. In September 2004, following an observation raised by Hon. Bashir Nadabo, the House of Representatives directed its Committee on Finance and Appropriation to investigate the alleged withdrawal of over N100 billion from the excess crude oil revenue, whereupon, the then Minister of Finance, Dr (Mrs) Ngozi Okonjo-Iweala, gave the assurance that the N386 billion standard in the excess crude oil account was intact. Her words:

*the excess crude money is being saved and no one penny of it is being touched. We have saved N386 billion, the equivalent of \$2.9 billion, at the moment, and it has enhanced foreign reserves to about \$12.4 billion and all of that is being saved... (The Guardian, 15 September 2004:3).*

More disturbing perhaps is the federation government’s denial until recently, that it ever tampers with the excess crude oil: when in September 2004, there were speculations that the federal government may have spent the excess crude account an amount not less than N100 million, to the detriment of other tiers of government, the then Minister of Finance, Dr. Ngozi Okonjo-Iweala, swiftly entered a rebuttal: at two separate for a – one with a delegation of the International Monetary Fund (IMF), and another during an appearance before the National Working Committee (NWC) of the Peoples’ Democratic Party (PDP) in Abuja, the finance minister stoutly denied that even a kobo of the excess crude revenue had been spent by the federal government. she had to the IMF delegation,

*as at now, the excess crude account has N386 billion and it has not been touched. Not a single kobo. And there is no intention of doing that until all authorities that this money belongs to come together to agree on how this should be spent...*

Impressed by the Minister’s denial, PDP’s National Publicity Secretary, Mr. Venatius Ikem said;

*the NWC wishes to state, in unequivocal terms that the money from the excess crude oil sales which totals N386 billion as at August 2004 is intact... there should be no pressure from any quarters for the expenditure of this money merely to satisfy unplanned contingencies.*

But unimpressed by the Minister’s statement and considering the gravity of the alleged illegal expenditure, the House of Representatives set up an ad hoc panel comprising its committees on finance and appropriations to investigate the allegation and report to the committee of the Whole House. It was then, and only then, that initial, spirited denials by federal government functionaries gave way to acceptance of culpability. At a hearing session conducted by the House, Dr. Okonjo-Iweala, in company of the Accountant-General of the Federation, Mr. Kayode Naiyeju, made a volte-face, owning up that the federal government had withdrawn some money from the excess crude oil account to finance the budget deficit in the 2003 budget on the basis that the federal government was “going to replace the money”. The CBN also explained that,

*... during the first seven months of 2004, the fiscal operation of the federal government was estimated to have resulted in a N100.3 billion, as against the budget deficit of N105.7 billion in the corresponding period of 2003. The deficit was financed from the CBN excess crude oil proceeds from 2003 and other funds.*



It has become pertinent at this point to state that the excess crude revenue in the custody of the federal government now stands severely endangered by its propensity for unauthorized withdrawals – an action which is clearly illegal, unconstitutional and unacceptable. One constitutional statement raised by the CBN statement is: How could proceeds from the excess crude oil account be used to finance the 2003 budget without any appropriation by the National Assembly? This question is pertinent because in a democratic government (properly so-called), no money can be spent without the approval of the National Assembly. Some have even speculated that federal government's claim of unilaterally saving the excess crude oil proceeds in a special account with the CBN for the proverbial "rainy day" may not be true.

### **PATH NOT TAKEN III: Illegal Withholding by NNPC of Accruals to the Federation Account**

Not only do the agencies such as the Nigerian National Petroleum Corporation (NNPC), the Federal Inland Revenue Service (FIRS) and the Central Bank of Nigeria (CBN) belong to the federal government while the revenues collected belong to the three tiers of government, some of these agencies are in the habit of illegally withholding accruals to the federation account. One of the contentious issues in Nigeria's fiscal federalism, which was not deliberated upon by the NPRC was the occasional illegal withholding or hoarding by the NNPC of accruals to the federation account. The NNPC is fond of deliberately under-declaring accruals to the federation account, the aim of which is not always clear. Few recent examples will suffice.

On 20 January 2006, the chairman of RMAFC, Alhaji (Engr) Hamman Tukur, announced at a press briefing that the federal government had set up a panel comprising the Minister of State for Petroleum, Dr. Edmund Daukoru, the Minister of Finance, Dr (Mrs) Okonjo-Iweala; the Accountant-General of the Federation, Alhaji Ibrahim Dankwambo; and representatives from the six geopolitical zones of the federation to investigate the alleged withholding by the management of the NNPC of the sum of N290 billion representing accruals to the federation account from the sale of domestic crude between November 2004 and December 2005. Observing that the NNPC had been "very irresponsible, unaccountable and less than transparent" in a manner that contradicts, diminishes and makes nonsense of the Obasanjo administration's anti-corruption crusade, the Conference of Nigerian Political Parties (CNPP) had threatened to issue an order of mandamus "to probe the reckless abuse of (due) process in the oil industry in the preceding years" (**The Guardian**, 23 January 2006:1-2).

### **PATH NOT TAKEN IV: Fruitless Search for Allocation Formula**

The NPRC failed to fashion an acceptable revenue allocation formula for the country. The search for an appropriate system of fiscal arrangement has led Nigeria, since the colonial period, to fashion out and experiment with numerous revenue allocation formulae as are evident from any careful study of the reports of the Phillipson Commission (1958), the Binns Commission (1964), the Dina Interim Revenue Allocation Committee (1968), the Aboyade Technical Committee (1977), the Okigbo Presidential Commission (1979), the T. Y. Danjuma Fiscal Commission (1988), Report of the National Revenue Mobilization, Allocation and Fiscal Commission (1989), the Shonekan Panel (1990), the Revenue Allocation Formula of 1992 and the Presidential Order on Revenue Allocation Formula (2002). Between 1967 and 1975, not less than five military decrees were promulgated on revenue allocation.

Finding a lasting solution for the Niger Delta Crisis within the framework of revenue allocation system loomed so large in the priorities of President Olusegun Obasanjo that he gave it the pride of place in his inaugural speech when he stated as follows:

*we intend, within our first 100 days, to enunciate a revenue sharing formulae that will practically eliminate the clamour in the Niger Delta and spur into and intra-state competition and innovativeness. As a basic principle, we accept the Latin maxim quid platanto solo solo cedit, that is he who owns the land owns what is on and under and above it. The moribund Petroleum Act and Land Use Decree are hereby repealed, and States whose land bear minerals are entitled to a minimum of 50% royalties therefrom (Obasanjo, 1999:3).*

However, "goal-achievement gap" which usually drag political leaders into policy contradictions (Wriggins, 1969) was to play itself out and prevent those sweet promises by the President from being realized seven years into his administration, thus confirming the assertion by Lord Stand (cited in Eminue, 2005) that,

*whatever politicians may say when they are in opposition, they soon find out when they get into office and read the confidential papers that they cannot possibly do what they said they would do, and must instead follow the line of their predecessor in office...*

The revenue allocation formula proposals submitted to President Obasanjo by the chairman of Revenue Mobilization, allocation and Fiscal Commission (RMAFC), Engr. Hamman Tukur, the Vertical Formula which gave the federal government 41.3%; state governments 31%; and local governments 16%. Proposals under the

Special Funds which totaled 11.7% were as follows: federal capital development funds 1.2%; ecological fund 1.0%; national reserve fund 1.0%; agriculture and solid mineral fund and its associated science and technology research 1.5%; and basic education and skill acquisition (BESA) fund 7.0%. Before this proposal, the reigning revenue allocation formula was 48%; 24%; 20%; and 8% respectively to the federal, state and local governments, and the special funds.

The submission of these proposals coincided with the phenomenon of “zero allocation” on the basis of which the National Union of Local Government Employees (NULGE) threatened a nationwide protest demonstration as the Union described the revenue allocation formula as a “totally unacceptable”, “anti-democratic action directed at the grassroots”, and as “a deliberate policy to destroy the local government system in the country” (The Guardian, 10 September 2001:8).

After a period of protracted maneuvers intimately associated with the politics involved in the preparation of a new revenue allocation formula, including what the sagacious Mudiaga Odje (2003:160) refers to as “the apparent disagreements between (sic) some Governors and the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC) over the proposed Bill”, the RMAFC, as demanded by the Constitution, made new proposals to the President who, in turn, forwarded same, with some adjustments, to the National Assembly for consideration. The formula contained in the Presidents’ Revenue Allocation Bill reduced the Federal Government allocation from 48% to 46.63%; while the statutory allocations to the States and Local Governments, which stood at 24% and 20%, were increased to 33% and 20.37% respectively. The existing horizontal (inter-State and inter-Local) principles were slightly changed, with the introduction of a new principle of population density, which was assigned a percentage weight of 1.5%, while the weights assigned the pre-existing sharing indices were slightly adjusted upwards or downwards such that the inter-State and inter-Local equality was increased from 40% to 45.23%; population from 30% to 25.60%; social development factor from 10% to 8.71%; internal revenue effort from 10% to 8.31%; land mass from 5% to 5.35%; and terrain from 5% to 5.35% (Suberu in Gana and Omelle, 2005:225-7). But unfortunately, the President later wrote to the president of the Senate calling for a stay of action on the ground that “wrong indices were initially used in the computation of the revenue allocation formula to the detriment of the Federal Government. A confirmation of this observation was contained in a publication that

*the Commission (RMAFC) Chairman admitted that wrong indices were used initially to compute allocations to States.... With the Onshore/Offshore Ruling, the Accountant-General of the Federation should ensure the recovery of all funds overpaid, and proper refunds made (This Day, 28 July 2003:3).*

Statutory allocation to the 20 Councils of Lagos State best illustrates the “zero allocation” phenomenon. Of the total revenue of N668,582,058.43 due to the Councils, only N170,118,594.83 was released, while N498,463,463.60 was deducted at source and credited to the National Primary Education Commission (NPEC) for the funding of primary education (The Guardian, 10 September 2001:8).

The Allocation of Revenue (Federation Account) Bill forwarded to the National Assembly by President Obasanjo in January 2005, to implement the Supreme Court ruling that the Federation Account should not be shared to entities other than the three tiers of Government, gave the Federal Government 52.68%; States 26.72%; and Local Governments 20.60%. Before the Supreme Court judgement of 5 April 2002, the operative revenue allocation formula, which was introduced by “Executive fiat”, gave the Federal Government 48.5%; State Governments 24%; and Local Governments 20%, a total of 92.5%. The balance of 7.5% was allocated under the special funds as follows: Federal Capital Territory Development 1%; Ecological Fund 2%; National Reserve Fund 1.5%; and Agriculture and Solid Mineral Development Fund and Technical Research or Development of Natural Resources 3% (The Guardian, 13 January 2005:3). Not only did the Federal Government maintains the status quo ante, indeed a lion’s share in relativity to its allocation to those of the State and Local Governments, apparently in an effort to enable it accommodate disbursement to all the expenditure items under the Special Funds as before the Supreme Court Judgement.

### **Revenue Allocation Principles and Formula**

One of the paths the NPRC could not take was a return to a revenue formula of the First Republic, which signaled the Golden Era of true federalism in Nigeria when the country’s revenue was distributed on the basis of the derivation principle. Section 134(1) – (2) of the 1960 independence Constitution (which was in pari material with Section 140 of the 1963 Republican Constitution) provided that

1. *There shall be paid by the Federation Account by each Region a sum equal to fifty percent of*
  - a. *the proceeds of any royalty received by the Federation in respect of any minerals extracted in that region; and*
  - b. *any mining rents derived by the Federation during that year from within that region.*

2. *the Federation shall credit to the Distributable Pool Account a sum equal to thirty percent of*
  - a. *the proceeds of any royalties received by the Federation in respect of minerals extracted in any region; and*
  - b. *any mining rents derived by the Federation from within any region.*

The balance of 20% went to the Federal Government. The above lavish or generous allocation to regions of origin was terminated by the Petroleum Decree (No. 51) of 1969, which vested all land and resources within, under, or upon the land on the Federal Military Government. The effect of this “anti-humane” legislation as Akpan Umobong (in Ekpo and Ubok-Udom, 2003:348) perceive it is that

*while the Federal Government and the non-oil producing States are reaping the gains of majority rule over the minority right, the oil-producing minority areas are agonizing under the weight of deprivation, gruesome killings by soldiers and police whose arms and ammunitions are paid for the minorities’ oil wealth.*

A communiqué issued by the six Governors and National Assemblymen of the Niger Delta after their Conference in Benin in July 2000, revealed that the South-South

- \* *Rejects, in its entirety, the sharing of the Education Tax Fund (ETF) on the basis of 774 Local Governments in the country. It therefore suggests that the proceeds of the Education Trust Fund be shared on the basis of equality of States or the number of educational institutions in the various States (this being sequel to the condemnable and unacceptable situation where the number of local government councils in just two States of one geopolitical zone is more than the total local government councils in all the six States of the South-South Zone;*
- \* *Upholds the call for a new Revenue Allocation Formula of 25% to the Federal Government, 45% to the States, 25% to Local Governments, 3% to Ecological Fund and 2% to other matters;*
- \* *Deplores, in strong terms, the reluctance of the Federal Government to pay arrears accruing from the 13% derivation from May to December 1999 (and) calls on the Federal Government to expedite action on the full payment of the arrears and insist on full payment as enshrined in the 1999 Constitution.*

The South-South delegates claimed they had the mandate of their people to demand 100% derivation but they did not voice that demand. Rather, they demanded 50% derivation as their “irreducible minimum”; but having regard to national unity, peace and stability, they were willing to accept, the interim, 25% derivation, with a gradual increase to 50% over a period of five years. The South-South delegates anchored their 50% (and later 25%) derivation demand on paucity of infrastructure, reminding the nation that

*the Niger Delta, a virgin community rich in oil deposits, trusting and believing in its compatriots in the euphoria of the prospects of independence, has been sapped, sucked, mocked, subdued, despoiled, repressed, oppressed, desecrated and deserted. They have no potable water... They do not have good roads or equipped hospitals, no good schools, electricity, in fact “no nothing from the Federal Government” (Where we Stand... 2005:45).*

If the plight of a Niger Delta with oil is this choking, calamitous and frustrating, the plight of a Niger Delta without oil is in some 30 – 40 years when the oil, an exhaustible/wasting resource would have been dried up, is better imagined than described or experienced.

The plight of the South-South is even rendered paradoxically in that its resources are “squandered and siphoned to build palatial edifices and other State capitals; to build bridges even across dry valleys to sustain the lavish lifestyles of our compatriots, leaving the Niger Delta to wallow in squalor, abject penury and utter hopelessness”.

A second ground on which the South-South demand is predicated is the “unimaginable environmental degradation and pollution” suffered by the Niger Delta Region, thus destroying fishery stock and other aquatic life, arable and grazing land, the flora and the fauna, and impairing human and animal health.

Thirdly, gas flaring and acid rain all of which lead to withered and parched land and landscape constitute a menace of a different kind, thus causing people in the host communities of oil multinationals to suffer constantly from unbearable heat, sweating, dehydration and unsolicited blinding luminescence”, as the divine order that “night follows day” is reversed. The South-South maintained that “the absence of electric light cannot be made up for by sustained gas flaring”.

Fourthly, adverting to a Report from the Federal Ministry of Petroleum Resources that there were 2,676 reported cases of oil spillages in the Niger Delta between 1976 and 1990, and an independent report by Green Peace indicating that 3,000 separate cases of oil spills, averaging 700 barrels each, were reported between 1976 and 1991, the South-South document maintains that “Oil Spillages are a common occurrence” in the Niger Delta

and that “the situation is much worse today”. The delegation lamented that “the people of the Niger Delta live in dirty, ravaged creeks, drinking from polluted waters into which they also defecate” and wondered: “how long can this human tragedy be allowed to go on?” (Where we Stand, 2005:17-19). The South-South point was unambiguously made: over five decades of oil and gas exploration has turned out to be a chronicle of raised expectations and unfulfilled promises to a traumatized and pauperized Niger Delta population that has got stuck in a highly devastated environment.

Among the delegates who respected the opinion of stakeholders from the South-South at the Conference was Smart Adeyemi, President of the Nigerian Union of Journalists, whom we beg to quote *in extenso*

*A lot has been said at this Conference on the percentage of derivation to oil-producing States... This is a federal system of government. We are not doing the oil-producing States any favour if we approve 50% derivation. In an ideal federal system of government, federating States should contribute certain percentage to the centre. The ecological problem and the degradation as a result of oil exploration justify the need for a minimum of 50% derivation to those States in the Niger Delta, which should be applicable to other resources in States (from) where they are derived. The present 13% derivation... negates the tenets of a federal system of government. The 1960 Constitution should guide us on the issue of derivation (mfyai@yahoo.com).*

### **South-West Stance on Derivation**

If the South-South delegates expected wholesale endorsement of their stance by their South-West counterparts, such endorsement was fortuitous and contingent. Initially, the South-West enthusiastically endorsed the South-South advocacy of 50% derivation in consonance with their original advocacy for originalism well articulated in The Yoruba Agenda. But when the deadlock occurred, with the South-South walking out of the NPRC even after climbing down to 25% in the interim, the South-West Governors and the Zones’ leaders to the NPRC had a momentous meeting at Ibadan to consider what position the South-West delegates, including Justice Bola Babalakin, Justice Bola Ajibola, General Oluwole Rotimi, Professor Adebayo Adedeji and a few others were initially mandated by the Ibadan meeting to intervene in the deadlock. The group later met the South-South leaders to the NPRC at Abuja apparently to persuade the latter to soft-pedal on their initial stance of 50% derivation and return to the *status quo* (13% derivation) and to the Conference.

The South-South delegates who were initially excited and enthusiastic about the meeting, pre-empting maximum support for their stance became highly disappointed by this reversal by leaders of the South-West, a zone which has always championed the cause of minorities with regard to equity and social justice. The question in their mind was why did the South-West, known over the years for providing veritable platforms for political struggles for equity, fair-play and justice, suddenly grow “legs of clay” at the last minute? According to Tunde Abatan,

*the genesis of this new development started with the decision of the South-West Governors and President Obasanjo to have their personal interest protected at the Conference. In doing this, they played on the age-long political divide in the South-West and they found a ready instrument in the traditional conservative bloc among the politicians and elite. The conservatives prefer a relationship with the North in line with the late Chief Ladoke Akintola in the First Republic (Abatan, 2005:B8).*

Leaders of the South-West delegation, may then have received instructions to flow along with the North rather than toe the line of “Yoruba Nationalists” or “self-confessed Awoists” (referred to by some Yorubas as “backsliding fifth columnists who have always aligned themselves with those oppressing the Yoruba”) whose romance with the late Chief Obafemi Awolowo, makes them to continue the agitation for true federalism.

Thus, parochial politics personal and group interests took the center stage as the Northern delegates were uncompromising in opposing anything over 17% derivation the Conference recommended, even as the South-South delegates discountenanced anything less than 25% in the interim as derivation fund. The President and State Governors were playing major roles in these matters – as the pipers (who nominated the delegates) they dictated the tune. For the South-West delegates, it turned out to be a bewildering game of double-speak, whereby “people say one thing and do a different thing” (courtesy Admiral Mike Akhigbe (rtd) (Sunday Vanguard, 3 July 2005:18).

### **The North and Revenue Allocation**

The position of the North on revenue allocation was evasive, and at best belligerent. The Northern States could be said to have been highly pleased with the awkward situation under the democratic dispensation in which, for some inexplicable reasons, no revenue allocation formula has been handed down by the National Assembly, thus



compelling the nation to fall back on the make-shift arrangement enshrined in Section 162(2) of the 1999 CFRN. On the whole, the North appeared to have been stampeded into participating in the NPRC by popular democratic forces, and, reflecting of the adage that “you can force a horse to the stream but you cannot compel her to drink water”, the Northern delegates decided to leave matters, as much as possible, as they had essentially been prior to the Conference – and ultra-conservative stance indeed. Only very minimal, if any, changes must be made. Concessions, if they are to be made at all, must be made reluctantly. The federation, as we knew it before the Conference, must remain impervious to change and must be shielded from radical change. Little wonder, then, that despite the fact that “fiscal federalism” or “revenue allocation” had become a turbulent or contentious issue since May 1999, the Northern delegation prepared no position on “fiscal federalism”. Instead, the Northern delegation’s position paper dumped “Developments (sic) or Oil Producing States” and “Resource Allocation” together as item number 10 in its position paper.

The undertakers of the Northern argument under “Resource Allocation” was to express “great concern” for the environmental degradation taking place in the Niger Delta and other oil producing areas of this country”. The North feels particularly “concerned that this situation is happening despite the huge sums of money being allocated to the oil producing States under the derivation formula of 13%”. According to the Northern document,

*between... 2000 (and) May 2003 alone, the total allocation to the oil producing States amounted to N280.5 billion, with Delta State topping the list with a total allocation of N89.3 billion, followed by Rivers State (with) N62.5 billion, Bayelsa N53.7 billion, Akwa Ibom State N45.9 billion, Ondo State N13.6 billion. These figures rose sharply by the year 2005.*

The Northern delegation said that it felt compelled to publish, for the attention of oil producing communities and “the entire nation”, the “enormous amounts of funds” allocated from the Federation Account, which represent “major concessions made to them in recognition of their particular plight” so that the affected oil bearing communities may enquire into “what happened to their money” in view of the fact that “no development is taking place” in the Niger Delta. The strategy adopted by the Northern delegates, then, had been to scandalize, demonize and vilify misapplication of funds or squandemia as the basis for not making concessions favourable to the South-South whose cardinal mission at the Conference was to secure increased percentage in derivation for the area. From the standpoint of the Northern delegation, accounting for huge funds under the 13% derivation periodically allocated to the South-South was a more productive endeavour than “the unending clamour for resource control which cannot be granted under the circumstances... the Northern delegation had foreclosed the debate even before the Conference could introduce it. The entire Northern effort here was indeed propagandistic, if not a veiled form of incitement, more so because it failed to also publicize comparative statutory allocation figures going to the Northern States and to show how responsible their utilization of such funds had been. But then, there was nothing innovative about the Northern publication, for, after all, as part of her effort to ensure public accountability and public enlightenment, the Federal Ministry of Finance had, over the years, been publishing the statutory allocations going to the respective tiers of government in the country. Apparently pre-empting the South-South demand for increased percentage derivation, the Northern delegates rather called for “a review” in order to allow “even development” to be undertaken “in other parts of the country and other sectors of the economy”. All these antics support the suspicion that, prima facie, the North had resolved never to make concessions on revenue allocation at the Conference.

### **Northern Stance at the Plenary**

Northern delegates on 8 June 2005 during a plenary session of the NPRC spoke in the fashion of Nuhu Yakubu (North East), pontificating that,

*clearly, the Conference cannot arbitrary change the percentage share for derivation. ...this is best left for an expert committee to work out the implications and make recommendations to the appropriate authorities (Daily Independent, 9 June 2005:A.15).*

Many other Northern delegates spoke in support of Yakubu, one of them, Halilu Baba Dantiye (who represented the Nigerian Guild of Editors) suggested that the 13% derivation should rather go directly to the oil producing communities – a apparent subterfuge for dividing the ranks of the South-South delegates at the Conference.

That Northern delegates to the NPRC had a zero-sum conception of the derivation fund going to the South-South would be extremely fatal or injurious to the Northern and Western States and the nation as a whole, as was underscored in an interview, with some degree of exaggeration, granted by Alhaji Ibrahim Hassan, Second Republic Minister of Mines and Power and Member of the Northern delegates to the NPRC:

*...if anything is given to the South-South above 17%, then all the remaining 30 States and Abuja will be financially strangulated and pauperized. Unemployment in the country will increase. Crime will increase. Civil strife and disorder will increase and there will be no more*

*money to pay even the staff of the States, except South-South, let alone money for any capital development in the country... if they get 25% or 50% the rest of the States will get zero allocation (Sunday Independent, 26 June 2005:B.12).*

The question to ask Alhaji Hassan and his Northern delegates is what is sacrosanct about 17% that hell will be let loose if “anything” is added to it? Why did 50% derivation to the regions in the First Republic not jeopardize or destabilize the Nigerian Federation? Alternatively, one could join the former Chief of Army Staff (COAS), Major General Mohammed Alli (rtd), in rhetorically posing the following questions:

*why did the derivation principle become untenable now, when it was workable when the “big three” (Hausa-Fulani, Ibo and Yoruba) produced the nation’s income – groundnut and cotton in the North, cocoa in the West, coal and palm oil in the East? Why was it that even the 15% allocated to oil States was frequently not released to them? Why are the policy benefits more of neglect than development and growth for the legitimate landowners that have lived there before Lord Lugard’s great-grand parents were born?*

Put succinctly, the main reason why the oil producing South-South and communities sacrifice their heritage or benefit only minimally from their abundant resources wealth is that they lack political clout. Correspondingly, the major ethnic groups that gain disproportionately from increased oil wealth of the South-South monopolize not only political power and privilege which enable them to establish political ascendancy “but also development, often imposing poverty and neglect on the minorities as a punishment for divergent loyalty and protest votes during elections” (Alli, 2001:162-3). Alhaji Hassan also argued that,

*investment in the oil sector was made by the entire Nigeria, not the South-South. The rest of Nigeria invested our money from cocoa from the South-West, coal from Enugu; tin, columbite, cotton, groundnut, hide and skin from the North. These were our exports in those days and from this export (sic) we realize (sic) revenue and invested it in the oil industry for oil exploration and development. That is what we are protecting. So anybody that said that we have not contributed anything to the revenue doesn’t know his history well and should go back to primary school... to the archives. By then, the South-South had nothing except their fish for consumption.*

Next, Alhaji Hassan argued that;

*the South-South should remember that the rest of us also shed our blood and buried our sons during the civil war in the place to protect them (South-South) and the oil industry. We died there. Otherwise they themselves would have been destroyed and the oil itself would have been destroyed.*

The language used in presenting these observations depicted that the Northern delegates had not completely divorced themselves from certain fixations, stereotypes, innuendoes, euphemisms and shibboleths capable of arousing ethnic, class or ideological tensions and emotions. Some of the issues raised by the Northern responses to South-South demands were particularly worrisome, as they smack of insensitivity to the plight of the disadvantaged and the underprivileged people of the Niger Delta Region. These include:

- i) The call by the Northern delegation for the relocation of the inhabitants of the Niger Delta or South-South, ostensibly in view of the “much complained-of-environmental despoliation”; and
- ii) The threat by the Northern delegation of imminent reduction in the 13% derivation which “we have already given to you; unless you explain satisfactorily what you have done with it”;
- iii) An alarm that any additional percentage derivation approved for the South-South would spell doom for other parts of the country.

### **South-South Governors and States’ Accountability**

According to Gboyega (2003),

*...calling on the oil producing States to account for past allocations from the Federation Account before raising any questions about existing revenue allocation... has a hegemonic intent... It is actually intended to have a sobering and weakening effect on the argument for derivation principle because it is selective.*

The call is selective because it touches on accountability, an issue that affects all the States of the Federation – oil and non-oil bearing States alike – as well as the Federal Government, none of which could be shown to have made prudent use of its share of the Federation Account significantly for the benefit of its constituency, even under Obasanjo’s democratic dispensation.

There is no doubt that the President and some of his key functionaries had given room for allegation of corruption and misapplication of funds on the part of the Governors which Northern delegates capitalized on to castigate South-South Governors. At a two day Niger Delta Youths Stakeholders Workshop organized by the

NNPC in Port Harcourt in April 2004, President Obasanjo passed a vote of no confidence in the management of the Niger Delta Development Commission (NDDC) and the oil-producing States for not doing much in terms of infrastructural development of the Niger Delta region. On a number of occasions, President Obasanjo had referred to “a situation where some Governors collected several billions as their allocation from the Federation Account without executing any single development project or development programme. Wondering why nobody bothers to ask the Governors of the Niger Delta States what they do with the 13% derivation fund, since the development of the Niger Delta is a collective responsibility, President Obasanjo hinted: “if you know how it (the 13% derivation) is spent, you will weep” (The Guardian, 21 April 2004:45).

This was a confirmation of the allegation by the then Minister of State for Finance, Mrs. Esther Nenadi Usman, that State Governors were siphoning the monthly statutory allocations of their States abroad:

*four... to seven days after the Federation Account Allocation Committee (FAAC) Meeting, the exchange rate goes up. That means that they (Governors) are using the money (their States' allocations) to buy up dollars. There is hardly anything to show for the money they are collecting. Make telephone calls to any of the States, ask after the Governor and you would be told that he has gone abroad (This Day (Sunday), 4 July 2004:16).*

Senator Tari Sekibo (Rivers State delegate to the NPRC) replied that corruption is everywhere and did not begin with the 13% derivation. Hear him:

*every year, hundreds of millions of naira are approved to fight desert encroachment. What you hear is ceremonial tree planting. By the time you know it, the whole money is finished... without any physical development in place... when you hear N5 billion being spent on something, when you get there, not up to N100 million is spent... (Sunday Independent, 26 June 2005:B.4).*

#### **Call for Mobilization of Resources by All Zones**

South-South delegates' solution as articulated by Senator Sekibo was that unless “the free flowing of money” to sections of the country that make no tangible or quantifiable contribution to the national coffers is reduced, “they will not look inwards and develop other minerals spread all over the country”, especially in their own zones, and it was for the development of such other mineral resources that the South-South had climbed down from 50% derivation to 25% so that the remaining 25% could be ploughed into such development. This prescription (strategizing on how other abundant and untapped mineral resources in other parts of the country could be harnessed) was in consonance with Benjamin Disraeli's standpoint that “the greatest good you can do for another is not just to share your riches but to reveal to them their own” (cited in Onyibe, 2005:B3). As this writer had demonstrated elsewhere (Eminue, 2006) there is no section of the country without valuable, untapped natural resources. The logic of the South-South prescription is that we cannot continue to operate the present convoluted federalism, which is predicated on a monocultural or monolithic oil-based economy while the solid mineral sector is not fully exploited, though known to be viable; while tremendous agricultural potentials of the Mambilla plateau continue to lie untapped; and while the tanneries, ginneries and textile mills which used to dot the landscape of the North-Central geopolitical zone of the country remain shut down on account of their inability to produce competitively.

Also Akpo Mudiagha Odje, a South-South delegate conceded, with regard to Governors who allegedly misapply the 13% derivation fund paid to them that:

*When you don't use the resources that have trickled down as a result of... the 13% derivation to curb the ills of poverty, to tackle the issues of resource theft (oil bunkering and pipeline vandalization), look into the whole question of health and education, mass employment, good roads, electricity, security for our people, but creating a new pool of poverty-stricken people, then you are invariably making the society ungovernable (Odje, 2005:30).*

In apparent response to Northern calls on South-South Governors to account for the huge derivation funds they receive, the South-South delegates, in their rebuttal, rhetorically pose the following:

- What has Nigeria done with the 87%, which has been forcefully wrested, from the Niger Delta over the year?
- Has the 87% been used to check the ill effect of desertification, especially in view of the scientific reality that it is preventable?
- Has the 87% been used to develop alternatives to oil and gas such as solid minerals which are known to abound in commercial quantities in other parts of the country so that the pressure on the Niger Delta people will be reduced?
- Has the 87% been used to create the enabling environment for agriculture so that the groundnut pyramids, cocoa, palm produce, timber and rubber will re-appear in Nigeria?

- What is the basis of comparison between the astronomical cost of development in the Niger Delta and that of other parts of the Federation?

According to another scholar,

*in a well-appointed federation, it is not the business of some busybody or prefect at the federal level to determine how any unit of the Federation handles its affairs or its expenditure. Once the people have elected their Governor, they should be deemed capable of putting their Governor in check and to recall, punish or impeach him or her as the occasion demands.... Ultimately, it is indiscreet and insulting for the Governor of one State, outside any formalized peer group assessment, to demand that other Governors must render accounts before they can be allowed to get their allocations for their States... Or when did the Governors of the North-North become prefects over the Governors of the South-South? Why should they act as veto holders who have more power than whole ethnic groups, nationalities, states and regions outside their domain? (Ofeimum, 2005:8).*

The South-South circulated statistics on contribution made to the Federation Account by the respective geopolitical zones and the statutory allocations received by them for the period January to April 2005 (table 1.1) to illustrate the fact that the North-East, North-West and North-Central contributed nothing to the common purse, yet Northern delegates are the most confrontational on the percentage derivation that should go to the South-South that contributes 91.54% and yet takes 17.3%. It is a clear case for the adoption of a revenue sharing principle that “no state or zone must take proportionally more than what it contributes to the federation financially” (see The Yoruba Agenda, 2005: para 48c).

**TABLE 1.1: CONTRIBUTIONS AND ALLOCATIONS TO GEOPOLITICAL ZONES (STATES AND LGs) FROM THE FEDERATION ACCOUNT (JANUARY – APRIL 2005)**

Geopolitical Zones	Amount received by each (in Nbillion)	% Contribution	% Allocation
North Central	45,811	0.00	7.48
North East	46,213	0.00	8.00
North West	44,488	0.00	8.31
South East	33,476	2.75	5.48
South West	42,502	3.97	7.43
South South	145,171	91.54	17.3

The South-East generally flowed along with the South-South on the issue of percentage derivation. The stance of the South-East delegates at the Conference was reflective of the statement by former President of Ohaneze Ndigbo in Delta North and South Senatorial District, Sir Peter Chukwu, to the effect that;

*... the 25% being demanded by the South-South as a benchmark is reasonable enough. Nigerians should grant that percentage. It is fair. Compared to their huge economic contribution to the nation, what they are asking for is a peanut because, I know that if oil was found in the North or West, they cannot accept 50% only; they would have asked for and enforced an increase in the 50% that came into being since 1960 (Sunday Vanguard, 3 July 2005:19).*

### Joe Irukwu’S Committee of Elders

The Committee of Elders or Elder’s Committee and Leaders of States’ Delegations became the instrumentalities used in resolving logjams and for reaching a consensus at the Conference, but as Ekeng Anam-Ndu, a South-South delegate pointed out in his Daily Independent column “Unpopular Essays”, “the much-vaunted consensus was a rouse as the Joe Irukwu’s Committee of Elders transformed itself into a scheduled arena for the conspiracy of the majority, recommending to themselves their cherished values” – a scenario which appeared carefully pre-arranged and choreographed as a conspiracy of the majority to ensure that the minorities of the South-South are “contemptuously ignored or manipulatively silenced”.

The Professor Joe Irukwu – led Elders Committee (with Dr. Umaru Dikko as Deputy Chairman was to resolve contentious issues, including resource control, local government funding, federating units, rational presidency, banning of military ex-Heads of States from membership of the National Council of State, tenure of president, governor and council chairman, elections, state creation, immunity, state police, INEC in the context of local government election. With respect to percentage derivation, the Committee of Elders recommended an increase in derivation from 13% to 17% - a 4% increase which Northern delegates described as “whooping”, (Arewa Consultative Forum considered it “charitable”) but which the South-South delegates considered



“tokenistic, ridiculous, insulting and unacceptable”, calling for a radical upward review that would guarantee rapid development in the Niger Delta Region.

Even how the 17% derivation was arrived at was most cavalier; Professor Joe Irukwu’s Elders Committee (dubbed “the Compromising Committee”) had met from 10a.m. to 6p.m. discussing only one item (percentage derivation) without any agreement, with members suggesting 13%, 15%, 18% and 25%. Apparently, in an effort to break the drudgery and immobilism, Deacon Gamaliel Onosode suggested that 5% be added to 13%. Major-General David Jemibewon then caught on Onosode’s impetuosity and suggested that a mean should be found and that is how the Committee arrived at 17% derivation.

With a motion for the adoption and acceptance of the Elders Committee Report being moved by an Ebonyi State delegate, Chief Martin Elechi, and seconded by Alhaji Abdullahi Ibrahim (SAN) and a counter-motion by another delegate, Professor Omafume Onoge, and seconded by Mr. Idris Miliki Abdul, the NPRC Chairman called for voting, whereby the counter-motion was defeated. The Chairman said that with the defeat of the counter-motion, the Report is adopted and accepted and he gave no room for a debate on an issue as important as derivation. A situation, in which a committee report was adopted without discussion, even when there were glaring opposition to it on the floor of the House, leaves much to be desired. This, essentially, was “Tobi’s faux pas or procedural blunder”.

The Achilles’ heel was the Conference leadership’s earlier decision “that whatever the 19 Committees recommended will automatically become the Conference’s recommendations, the quality and weight of criticisms at the Second Plenary notwithstanding” (Anam-Ndu, 2005:A.16). The blame for messing up the NPRC has been heaped on its Chairman, Justice Niki Tobi, for directing initially that there would be no division on any issue and yet, calling for one while handling the Conference deliberation over the report of the Revenue Allocation and Fiscal Federalism Committee on percentage derivation. It is indeed a fact that one of the Standing rules of Procedure adopted by the plenary of the NPRC had enjoined that spirited efforts be made throughout the deliberations with a view to forging a consensus in arriving at decisions and recommendations. The point is, if the purpose of the Conference as unambiguously stated by its convener, President Olusegun Obasanjo, during its inauguration was “to discuss and reach consensus on any aspect of governance arrangement for reinforcing the unity, cohesion, stability, security, progress, development and performance of the Nigerian Federation”.

The Northern delegation that predictably formed a majority in the Committee of Elders as well as in the Plenary refused to support any increase beyond 17% as derivation. In the heat of the NPRC, Governor Abdullahi Adamu of Nassarawa State had calculated that if “resource control” (read increase in percentage) succeeded, the oil producing States would take away more than N23 billion from the Federation Account while the more numerous non-oil producing States would be taking away about N800 million (The Guardian, 18 July 2005:8). The Arewa Consultative Forum (ACF), described the 50% derivation demanded by the South-South as unwarranted and “an act of blackmail”. Reacting to these assertions, Hon. Obahigbon (a South-South delegate) wondered why the North feels that what is good for the Goose cannot be good for the Gander. His words:

*at the time that the North, which is opposing us had enjoyed 50% derivation, it was not unwarranted and they were not blackmailing the country. Now that the South-South is supposed to enjoy the same thing, it has become unwarranted and an act of blackmail (Sunday Vanguard, 3 July 2005:18).*

The insistence by the North that it would not support any increase over 17% was apparently a tactical plan to trade off or concede the Presidency to the North in 2007 in exchange for 25% derivation. It is in record that some South-South delegates were already falling for the plan until the South-South People’s Assembly (SSPA) warned that the South-South would not trade off the Presidency for Resource Control, and that anyone from the South-South who accepts a position of Vice – President was “on his own”.

An expanded Business Committee headed by Alhaji Abdullahi Ibrahim (SAN) with the former Commonwealth Secretary General, Chief Emeka Anyaoku; and leaders of the 36 State delegations and the FCT as members, was mandated “to look into the problem” beneath the logjam and advise accordingly. The Committee reportedly recommended that the Conference rescind its decision on the Elders Committee to address the procedural error observed in the adoption of the Committee’s report so as to carry the South-South delegates along. But Northern delegates vehemently opposed the recommendation on the ground that decisions on Revenue Allocation and Resource Control had already been taken despite the controversial nature of the Conference’s Plenary Session and could not be opened.

The point has been raised regarding the validity of the 17% derivation adopted by the NPRC after the walk-out by the South-South and by some delegates of the South-East (for, by Alhaji Ibrahim Hassan’s admission, “A few delegates from the South-East walk(ed) out on the basis that they would not vote because the South-South people have gone out” (Sunday Independent, 26 June 2005:B12). The point to stress really is that,

given the Conference's earlier ruling that its decisions would be by a simple majority of members participating and voting on a particular issue, rather than being based on a simple majority of the total membership of the Conference, the decision of the Conference on 17% derivation could hardly be invalidated. What could actually be invalidated was perhaps the procedure by which the recommendations of the Elders Committee under the chairmanship of Professor Joe Irukwu (and the Deputy chairmanship of Dr. Umaru Dikko).

### **Middle Belt (North Central Zone)**

Delegates from the North Central (Middle Belt) geopolitical zone, supported by two of their umbrella organizations – the Middle Belt Progressive Movement (MBPM) and the Middle Belt Yoruba Organization (BYO) called on the NPRC to approve 25% derivation to the South-South States because, the civil war which compelled the federal government to appropriate all incomes from minerals to enable it to prosecute the war had ended 35 years ago, so that there should be a return to the *status quo ante* – 50% derivation formula. They also called on the NPRC to “ignore the North-North which had used their 35 years in the leadership of the country to better the lot of their people”, maintaining, with respect to Northern insistence on 17% derivation, that “those who had eaten their tomorrow yesterday must not hinder those who see a brighter future for themselves”.

The Middle Belt delegates accused the North-North of “failure to use their own revenue allocations to develop the various mineral resources lying fallow in their soil” and called for “a five-year deadline for the North-North to use their allocations to develop their mineral or natural resources” (Ashaka, 2005:4).

The agreement reached between South-South delegates and their Middle Belt counterparts proved to be of doubtful consequence. The communiqué issued after the Second Session of the Middle Belt – South-South Summit held in Port Harcourt on 4 June 2005 and signed by General T. Y. Danjuma, GCON and Hon. Justice A. G. Karibi-Whyte, CFR, contained the following two items which underscore the spirit of cooperation and mutual understanding between leaders and elders from the two geopolitical zones:

- Middle Belt support for an enhanced revenue derivation formula at a level of not less than 50% as well as the joint participation of the federal, state and local governments and communities in the exploration, exploitation and management of mineral resources found in their land.
- South-South support for the Middle Belt quest for the creation of additional states and establishment of Solid Minerals Producing Areas Development Commission (SOMPADEC) and Hydro Power Areas Development Commission (HYPADEC) (The Guardian, 6 June 2005:11).

While the interest of the Middle Belt was duly accommodated in the Conferences' final recommendation, that of the South-South was not, thus pointing to the possibility that Middle Belt cooperation alone was not enough to see the South-South through.

Against the background of the South-South's demand, the Committee, though convinced that greater prominence should be given the derivation principle in the distribution of the Federation Account among the various tiers of Government than presently, merely recommended the appointment of a Special Committee to advise on the percentage increase in derivation principle and a possible review of the vertical revenue sharing formula. The Conference not only recommended an increase from the present 13% to 17% derivation which had compelled South-South delegates to stage a walk-out, “that the derivation principle should be applicable to all revenues, except VAT, accruable to the Federation Account” and “that there should be a Special Fund for ecological, man-made disaster, with a Special Agency set up to administer the Fund”, but also that Solid Minerals Producing Area Development Commission (SOMPADEC) and Hydro Power Area Development Commission (HYPADEC) “be established to address the issue of environmental degradation as a result of prolonged mining and hydroelectricity activities”. The Northern delegates thwarted any effort by the South-South counterparts geared towards commitment to the definite percentage increase in derivation, maintaining that given federation government's contribution through the payment of 15% of 15% derivation fund as Counterpart Fund to the NDDC, and given the contribution of oil multinationals to NDDC, the total amount of money paid to oil producing states far exceeds the 13% derivation prescribed in the Constitution. Thus, the Northern delegates took advantage of their numerical superiority not only to recommend the establishment of SOMPADEC and HYPADEC at the level of Committee but also endorse same at the Plenary of the Conference. For the South-South that walked out, the lesson learnt is that you cannot fight a cause to a logical conclusion from the sideline or from outside the decision-making structure or forum. They ought to have stayed there to slug it out together.

### **Joint State/Local Government Account**

Owing to a bottleneck which the State/Local Government Joint Account represents in the allocation of revenue to Local Governments and the problems of transparency and accountability associated with it, the Conference endorsed the Committee's recommendation for the State/Local Government Account to be scrapped and for a

State Revenue Mobilization Allocation and Fiscal Commission (SRMAFC) whose members are screened by the State House of Assembly, to replace it. The SRMAFC is mandated to apply the same revenue allocation formula adopted by the RMAFC to allocate money from the Federation Account. In order to stem the tendency towards the proliferation of Local Governments by States, “the number of local governments in a state should not count as a criterion for revenue allocation”. Number, which gives Kano state (non-oil producing state) with 44 local councils undue advantage over Bayelsa (an oil producing state) with only 8 local councils, would no longer be the criterion for statutory allocation once the recommendations of the NPRC are implemented. The NPRC now calls for the citizenry to be involved in the monitoring of their Governors for transparency while PCC and EFCC are to be made more effective. It says:

*the citizenry in each State shall be constitutionally empowered to monitor and challenge any violation and mismanagement of public funds. Public Complaints Commission should be more effective and Economic and Financial Crimes Commission should be empowered to sanitize government expenditure at all levels.*

### **Creation of an Independent Mechanism for Periodic Review**

Since the advent of democratic dispensation in May 1999, state governments have complained about various aspects of the federal government’s custody and management of the Federation Account, particularly because of the lapses sometimes caused by federal agencies such as the NNPC, FIRS and the Nigerian Customs Services. Major stakeholders – State and Local Governments – have continued to highlight discrepancies associated with figures released by the Accountant-General of the Federation in respect of accruals to the Federation Account. However, the Conference recommended that amendment of the RMAFC such that it would remain an independent body to undertake periodic review. RMAFC’s independence in terms of composition and funding directly from the Federation Account is to be guaranteed so that it could undertake the assignment. It recommends the appointment of Director-General in charge of the Federation Account under the RMAFC. This proposition is of less merit than the appointment of the Accountant-General of the Federation and Accountant-General of the Federal Government as advocated unanimously by the State Governors, so that the abuses previously complained of by the Governors may not be removed by the implementation of the NPRC recommendation on this matter. The RMAFC is to liaise with the National Assembly to enact an enabling law for imposition of penalties and prosecuting of defaulting Chief Executive Officers of public institutions who fail to make adequate disclosures or cooperate with the Commission in the discharge of its constitutional responsibilities. All these are less than perfect methods of guaranteeing accountability. We can only wait to see how these new constitutional and structural reforms will check abuses of the past.

### **Issues Not Resolved**

A number of issues associated with fiscal federalism were not resolved, or even discussed by the NPRC. We can only identify and briefly discuss a few of these here.

### **Fiscal Responsibility**

A second contentious issue is how to treat excess revenue, particularly the one arising from excess crude oil sales, such that the principle of federalism which confers a certain degree of autonomy on the federating units and the constitution are flagrantly violated. For instance, although Section 162 stipulates that the first vote of charge on any amount standing in the Federation Account should be shared same among the tiers of Government, the federal government has been reluctant to share excess crude oil proceeds, insisting instead on “saving for the rainy day”. The Finance Minister, Dr. Okonjo-Iweala, has sermonized infinitely that;

*for much of the 44 years that this country has been independent, we have not managed our resources well in the services of our people... Our fiscal policies have been characterized by poor planning, massive waste and wrong priorities... We need fundamental action to attack this problem of fiscal inconsistency and indiscipline from the root (The Guardian (Sunday), 2 January 2005:25).*

Okonjo-Iweala has also lamented “the zigzag pattern of our national expenditure in the last 20 years – when we earn more, we spend it immediately and when oil prices crash, expenditure also falls”. According to the Minister, such “anti-development and anti-commonsense” spending profile has resulted in huge pension arrears of over N1 trillion that have been accumulated by past governments; and huge contractor debts of about N600 billion, to mention but a few. As solution, the Minister then proposed the Fiscal Responsibility Bill now before the National Assembly (since November 2004), intended to ensure accountability, sound financial management, shift of emphasis from revenue sharing to revenue generation, minimization of risks and fluctuations in government fiscal operations; prudent public debt management, etc, emphasizing that the Bill has been adopted

in Argentina, Brazil, Britain, India, South Africa, European Union member-States and the American State of California and should also be adopted in Nigeria. Although the federation government is anchoring the Fiscal Responsibility Bill on Section 16 (1-2) of the 1999 CFRN which obligates “the State to direct its policy towards ensuring the promotion of a planned and balanced economic development”; and towards the harnessing and distribution of material resources so as to serve the common good; as well as on Section 4 (2) which empowers the National Assembly 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 Exclusive legislative List, State and Local Governments insist on Federal government’s strict compliance with Section 162 (3) of the 1999 CFRN on vertical sharing. In fact, State and Local Governments have advised the Federal Government to show good example of prudent, management/saving of its own share of the Federation Account for other tiers to emulate.

### **Ruling Over of Balances in Federation Account**

Another hotly contested issue in intergovernmental relations in Nigeria, which was not addressed by the NPRC, was the right of the federal government to roll over balances in the Federation Account in one fiscal year to another. States and local governments usually contend that such funds and balances should revert to the Federation Account at the end of the year and be distributed in accordance with approved allocation formula in vogue. For instance, states and local governments had insisted, until the federal government grudgingly acquiesced in their demand that the \$1.3 billion rolled over by the federal government as balance in 2000 be distributed in the January 2001 meeting of the Federation Account Allocation Committee (FAAC) (The Guardian, 11 February 2001:7). The communiqué issued at the end of the second summit of the Conference of Southern Governors in Enugu on 10 January 2001 reiterated, among other things, that in accordance with Section 3 (5) of Decree No. 36 of 1982, the federal government had no right to roll over balances in the Federation Account, as “such funds should revert to the Federation Account at the end of the year and be distributed in accordance with approved distribution ratios” (The Guardian, 5 February 2001:66).

### **Federal Government Appropriation of Budget Surplus**

Akin to the treatment of balances in the Federation Account is what the federal government does with budget surpluses. The federal government projection for 1998 was estimated at \$19.3 billion which, when converted at the autonomous rate or parallel market, amounted to N1.6 trillion. Using the official exchange rate of N22 to \$1, a lower figure of N424 billion was arrived at. The federal government had reportedly appropriated or “pocketed” the difference (The Punch, (Editorial) 28 December 1998:8). Such appropriation by the federal government has been held as “destroying the principle and practice of fiscal federalism and democracy in the country, rendering the states’ and local governments’ finances anemic” (Punch (Editorial), 16 December 1998:8).

### **Non – Representation of Local Governments at FAAC**

There is this belief that unless one is represented directly in an institution whether for deliberation, for taking executive decisions or for authoritative allocation of resources, one is not too sure of having a fair share, equitable opportunity, etc in the goings-on (Joseph, 1991:67). Federalism is all about sharing – sharing of responsibilities or resources. Allocation of funds to the various tiers of government is usually the most contentious issue in a federal structure. Yet, local governments, as the putative “third-tier of government” have no direct representation at the Federation Accounts meetings, which allocate funds. Local governments are usually represented at Federation Account meetings by functionaries of the Ministry of States and Local Government Affairs – an outfit under the Presidency overseeing the activities of the local governments. The disadvantage suffered by Local Governments through such indirect representation was poignantly stated by Professor Dele Olowu (1995:12) in an article, which we beg to quote *in extenso*;

*...Local governments are not in a position to know (whether or not) they receive their full entitlements from the federal government. They are not directly involved in monitoring what is due to them either through the National Revenue Mobilization Allocation and Fiscal Commission or the Central Bank. The federal government, in recent years, created separate dedicated accounts which most of the other levels of government were not aware of. Some of the local government monies are often kept back as savings without the knowledge of local government functionaries. But perhaps the most serious problem is that the criteria used in sharing Federation Account monies do not take into consideration critical factors such as revenue generation effort, actual need of each local government and their capacity for development needs.*

### **Reckless Spending**



A critical issue in intergovernmental relations in Nigeria, which did not feature in the NPRC deliberations, is reckless spending by Government. We posit that there is an interconnection between political office in Nigeria and petro-naira; politicians seek political offices such as the presidency so as to be able to preside over the sharing of Niger Delta's oil wealth. The belief by many states in Nigeria that they can always have recourse to a generous and omnipotent federal government has translated into fiscal irresponsibility, misdirected spending, wastefulness, outright squandermania and mountainous corruption, at the national level particularly, the acrimonious competition for political power in order to preside over the sharing of the painlessly derived oil largess's has become extremely vicious and destabilizing, with stiff competition for the office of executive president assuming the dimension of life-and-death struggle on account of Niger Delta's oil wealth.

An example par excellence of reckless public expenditure in Nigeria during the military rule pertains to disbursements of the \$12.4 billion Gulf Oil Windfall. According to the Okigbo Panel Report, "many large projects of doubtful viability and many more of clearly misplaced priority" were executed which the Okigbo Panel described as "the mismanagement of the \$12.4 billion of Nigeria's oil revenues during the 1991 Gulf War".

*a documentary film on Nigeria, \$2.92 million; purchase of TV/Video for the Presidency, \$18.30 million; ceremonial uniform for the army, \$3.85 million; staff welfare at Dodan Barracks/Aso Rock, \$23.98 million; travels of the First Lady abroad, \$.99 million and the President's travels abroad, \$8.95 million. Other expenses were medical (clinic at Aso Rock), \$27.25 million; Gifts (Liberia), \$1 million; (Ghana) \$.50 million, Embassies – London, \$18.12 million; Riyadh, \$14.99 million; Tehran, \$2.76 million; Niamey, \$3.80 million; Pakistan, \$3.80 million; Israel, \$13.07 million; TV equipment for ABU, \$17.90 million; Ministry of Defence, \$323 million; Security, \$59.72 million; Defence Attaches, \$25.49 million and General Headquarters, \$1.04 million (The Punch, 17 May 2005:3).*

The papa then asked; How do you spend \$18 million on TV/Videos, \$27 million on the Aso Rock (President's home on the Hill) clinic – what kind of sickness did these people have other than the obvious?

Under the present democratic dispensation, the N38.215 billion Abuja Stadium Contract is a scam, which some analysts have placed under a special problem class. Six FIFA-rated stadia already exist in different parts of the country. The Academic Staff Union of Universities (ASUU), Calabar Chapter, had in 2001 quarreled with federal government's plan to purchase five Presidential aircrafts at N320 billion whereas, the same government cannot spend N116 billion on education at all levels, describing the planned expenditure as "misplaced priorities" (Eminue, 2005:58). The NPRC ought to find ways of arresting financial hemorrhage that has continued to keep us utterly underdeveloped.

### **Withheld Lagos Local Government Fund**

A thorny issue which borders on illegality, unconstitutionality and contempt of Supreme Court judgement which is intimately associated with Fiscal Federalism and therefore ought to have been discussed but which was not deliberated upon was the withholding by the President of statutory allocations belonging to the local governments of Lagos State – funds withheld until the 37 newly created local governments of Lagos State could be published in the Appendix to the Constitution. Admittedly, the President reluctantly released N20 billion of the embargoed statutory allocations due Lagos State councils pursuant to the intervention of eminent Nigerians who brokered peace in the matter between Mr. President and the Governor of Lagos state, who had earlier opted for a judicial resolution of the dispute. But Mr. President was unjustifiably withholding N14 billion of the allocation as at the time the NPRC was holding. To the extent that Mr. President had authorized full payment of Ebonyi, Katsina, Nassarawa and Niger States who earlier reverted to the old councils, he should release Lagos state council allocation because that State had also reverted to 20 local governments as before. The NPRC ought to have prevailed on Mr. President to pursue the path of righteousness, constitutionality and humaneness, following the Supreme Court Judgement of 10 December 2004, reinforced, for effect possibly, on 7 July 2006 unambiguously declaring that it is not the business of the federal government to police State Governors in the running of local councils pursuant to the stipulations of Section 7 (1) of the 1999 CFRN.

### **Conclusion**

After several years of avoiding the convocation of a Sovereign National Conference, President Olusegun Obasanjo's federal government finally succumbed to popular democratic agitation for the federating units in Nigeria to dialogue among themselves in order to re-negotiate the terms of the federal compact. About 400 delegates, selected essentially by federal and state governments finally held a Conference for about 3 months. After brief opening deliberations, the NPRC broke into 19 Committees one of which was the Committee on Revenue Allocation and Fiscal Federalism under the chairmanship of Chief Afe Babalola (SAN) and the vice

chairmanship of Dr. Umaru Dikko, Leader of the Northern delegation. This chapter had adumbrated essentially on the recommendations of the NPRC as they relate to the work of this Committee and the Plenary Session of the Conference. Essentially, the Committee had six Terms of Reference, which pertained to revenue allocation and fiscal federalism. Percentage derivation was the Achilles' heel to the Committee on Revenue Allocation and Fiscal Federalism and, *ispo facto*, to the NPRC, to the extent that the Conference wound up owing to the discontent, culminating in the walk-out by the South-South delegation generated by this issue. The Conference turned out to be essentially an arena for confrontation between the South-South geopolitical zone that clamours for true federalism, resource control, increased derivation fund and a restructured federation, in which the federating units exercise substantial autonomy on the one hand, and the Northern delegation, which was violently opposed to any increase in percentage derivation and supported the retention of the *status quo*.

Yet, in demanding increased derivation, the South-South or Niger Delta Region was not inventing a new logic. The zone was simply demanding justice, fair play and equity based on an arrangement that existed before the emergence of oil in Nigeria's political and economic scene. The Conference foundered on some technical procedural rules, namely; that members of Committees must not contribute to the adoption and debate but of their Committees' recommendations at the Plenary; that a decision, once taken by a Plenary, can never be revisited, regardless of the weight of criticisms and objections it may attract. But then, like Caesar's wife, the President ought to be above reproach and government generally ought to give the delegates to the Conference a free hand to discuss the sensitive issues before them in the best interest of the nation as they say them fit. However, these were not to be. The Conference has been adjudged as a huge success, despite the South-South walk-out, in that out of about 185 issues discussed, agreement or consensus was reached on all but two: derivation/resource control and tenure extension for the President, Governors and Council Chairmen. Paradoxically, the President has forwarded all volumes of the Report of the NPRC to the National Assembly, which *ab initio*, had refused to approve appropriation for the Conference for deliberation and advice. The public expects the NPRC recommendations to constitute an essential input into the process for amending the 1999 Constitution of the Federal Republic of Nigeria. With regard to the South-South agitation for 25% derivation (rather than 50% which became operative in the First Republic until the Nigerian Civil War), it was hoped that our then President, who had so far demonstrated a penchant for providing solutions to thorny political problems, would exhibit statesmanship enough. This he failed to do, and the nation floundered with many issues not yet resolved.

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