

The 2011 National Minimum Wage Act Controversy and Trade Dispute in Nigeria: Problematizing Nigeria's Fiscal Federalism

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Abstract

The 2011 National Minimum Wage Act raised serious controversy and debate in Nigeria thereby problematizing the nature and structure of Nigerian federalism and fiscal federalism. By adopting qualitative method of analysis, the study concludes that, one, the trade unions' insistence on uniform national minimum wage scale hinders the enforcement of the National Minimum Wage Legislation, and two, variation in revenue profile of states in Nigeria impedes implementation of National Minimum Wage Act 2011 by some state governments. Following from the above, the study made some recommendations prominent among which are, one, amendment of some sections of the Nigerian Constitution necessary for 'true' (fiscal) federalism; two, restructuring of the structure of Nigerian federalism anchored on the principle of viability; three, allowing states to have their own minimum wage and wage structure based on their ability to pay and the subsisting cost of living or living wage.

Keywords: Minimum wage, trade union, trade dispute, federalism, fiscal federalism, revenue and Nigeria

1. Introduction

In most countries of the world, it is the responsibility of the government to cater for the wellbeing of its citizens. Even in the capitalist states, governments still have a role to play towards the welfare of the workers apart from maintenance of law and order. For instance, more than 90 percent of all countries have some kinds of minimum wage legislation. Minimum wage law or legislation refers to the law or rule that establishes a standard minimum payment and prohibits employers from hiring employees or workers for less than a given hourly, daily, weekly or monthly minimum wage.

Consequently, Adesina (2000) notes that one of the means through which government ensures the wellbeing or improved living conditions for its citizen is through introduction of national minimum wage legislation, and the mechanism for reviewing it. This is to prevent the exploitation of workers by their employers. Nigeria is, therefore not an exception. Fajana (1994) on his part states that the interest of the Nigerian government in the labour welfare dates back to colonial era in the 1940s when it enacted various labour laws seeking to regulate labour relations and promote the welfare of workers.

In 2010, the Nigeria Labour Congress (NLC) clamoured for upward review of the National Minimum Wage and had just suspended another strike which started on May 3, 2010 on the plea of the acting president Goodluck Jonathan. Subsequently, a new National Minimum Wage Act was signed into law in 2011; it mandates employers in Nigeria to pay their workers nothing less than 18,000 Naira. Again, in 2011, NLC went on strike to protest refusal of some states to implement the new National Minimum Wage Act. These constant calls for upward review of National Minimum Wage Act even when employers are not complying with the existing ones show that National Minimum Wage Act has not been able to address the problem it was set out to solve. Even the existing National Minimum Wage Act has not been well implemented by some states or complied with by the private sector, especially the informal sector. Thus, this study contends that trade unions' insistence on uniform national minimum wage scale hinders the enforcement of National Minimum Wage Legislation; and also, that variation in revenue profile of states in Nigeria impedes implementation of National Minimum Wage Act 2011 by some state governments.

2. A Historical Overview of Agitations for Minimum Wage and National Minimum Wage Legislation in Nigeria

Perhaps NLC is right to state that this is not the first time government is reneged on agreements. Agreements reached with government were sometimes distorted at implementation or not implemented at all by government. For instance, the 2000 Wage Review Agreement provided for a further 25% wage increase for workers with effect from May 1, 2001 and 15% wage increase with effect from May 1, 2002, was not implemented. As a result of industrial dispute over the non-implementation, a 12.5% increase rather than the 35% agreement in 2000, was signed in 2003. Yet in the end, only an increase of between 4% and 12.5% was implemented by the Federal Government. Subsequently, the Shonekan Committee was set up which recommended a 25% increase in salaries, Obasanjo's Administration unilaterally implemented a 15% increase in 2007 (Asodike and Jaja 2012).

This is the reason why Asodike and Jaja (2012) note that the push for increase in minimum wage is becoming rampant in Nigeria. NLC has noted that workers had on many occasions in the past demand for a general upward review of wages and an increase in the National Minimum Wage. For about 15 times in Nigeria

between 1945 when the workers staged the famous 45 days general strike for a Cost of Living Allowance (COLA) and 2007, when the demand won by workers for a 25% general wage increase through the Ernest Shonekan Wage Consolidation Committee was arbitrarily cut down to 15% by Obasanjo's Civilian Administration.

Asodike and Jaja (2012) note that in addition to setting up commission, the Nigerian government also embarked on the use of decree under the military regimes and legislative Act under civilian democratic regimes. For example, between 1973 and 2003, there were seven of such arrangements, namely, Wage Board and Industrial Council Act 1974, National Minimum Wage Act 1981, National Minimum Wage Decree No. 43 of 1988, National Salaries, Incomes and Wages Commission Decree No. 99 of 1993, National Salaries, incomes and Wages Commission (Amendment) Decree No. 17 of 1999, National Minimum Wage (Amendment) Act 2000, and the National Minimum Wage (Amendment) Act 2003. The Minimum Wage Act of 2000 ensured an increase of basic salary of 5,500 Naira for federal workers and 4, 500 Naira for state and local government workers. This Act ensured that wages were reviewed every two years and as well provided for a 25% increase in wages for government workers from May 1, 2002, which was never implemented.

However, the history of minimum wage cannot be separated from the history of public service wage negotiations and increment which dates back to the Hunts Commission in 1934 during the colonial era. As far back as 1943, the wage, fixing and registration ordinance (No. 40 of 1943) came into effect establishing wage boards modeled after those of the United Kingdom. Subsequently in 1946, the British Colonial Secretary issued a circular to all heads of government departments requesting them to take immediate action to ensure that proper wages and conditions of service were observed. The 1943 wage fixing and registration ordinance was later replaced by the Wages Board Ordinance in 1957 also based on the United Kingdom Wages Council Legislation (Onuegbu 2010).

In the post-independence Nigeria, the federal Government in 1973 enacted the Wages Board and Industrial Council Act which empowered the Minister of Labour to set up machinery for fixing minimum wages and conditions of service in both private and public sectors of the economy. However, it was in 1981 that the minimum wage was first passed into law as the National Minimum Wage Act of 1981 which prescribed a minimum wage of 125 Naira per month which was revised in 1990 to 250 Naira per month, and revised again in 2000 to 5,500 Naira per month. The 2002 Minimum Wage Amendment Act was amended in 2010 based on recommendation of the Justice Alfa Belgore led Tripartite Committee on National Minimum Wage (Onuegbu, 2010).

Ogunna (1999) notes that prior to the recommendation of Sir Walter Harragin Commission 1946, the structure of the civil service was broadly divided into European and African services in which the former enjoyed better conditions of service, higher pay, etc, than the latter. But following the implementation of the Report of Sir Walter Harragin Commission 1946, this structure was abolished and replaced with the structure of Senior and Junior services. For the first time in the history of Nigeria, the Commission introduced into the civil service the principle of equity and fairness, that is, uniform basic salary for both Europeans and Africans.

Thereafter, the implementation of the report of the Gorsuch Commission, the old structure of the civil service which divided the civil service into senior service and junior service was abolished and replaced with a structure of five grades, viz, super-scale, administration, executive, clerical and sub-clerical for administrative cadres; and super-scale, professional, high technical, technical and minor technical for professional/technical cadres. The implication of Gorsuch Report ensured revision of the structure of salary scales based on the revised grade structure (Ogunna 1999).

Subsequently, implementation of the Mbanefo Salaries and Wages Commission in 1959 ensured increases in the salaries, wages and allowances of public servants based on the existing five grading system. The Morgan Commission of 1963 that followed it introduced minimum wage for workers based on geographical area, varying from region to region depending on the economic conditions of the areas like cost of living. However, the implementation of the recommendations of the Elwood Grading Teams in 1964 upturned this variation in minimum wage to achieve uniformities in the wages, salaries and allowances of workers discharging identical functions in the public service, that is, equal pay for equal work, or in line with the principle of fairness and equity. Also, the implementation of the recommendations of Elwood Grading Teams of 1964 resulted to increase in salaries and wages or higher remuneration for civil servants. The implementation of the recommendations of the Adebo Salaries and Wages Review Commission 1970-1971 resulted to a general increase in salaries and wages of public servants and a total abolition of daily paid system for workers (Ogunna 1999).

During the First Republic, the determination of salaries and wages of public officers was regionalized in keeping with the federal principle. Each government of the Federation determined the salary grading and pay for its workers depending on its ability to pay. There was no uniformity of salaries and wages in the Federation. In addition to the differences in the salaries structure of public servants among the various governments in Nigeria, there was also a difference in the salary structure of various organizations within a government such as public corporation, the civil service, the teaching service, local governments and others. The grading and pay of

public servants within a state was based on the traditional classes and the cadres of public servants and the cadres were over six hundred (Ogunna 1999).

Consequently, there were numerous and complex salary structures within each government of the Federation. The Udoji Reform of 1974 brought a unified structure of grading and pay. The Commission established a broad uniformity in the grading and pay of all the public servants within all the public services in the Federation based on a seven-point consideration. It introduced a seventeen salary grade level with each grade level subdivided into salary steps. The Commission described it as a rational pay system based primarily on the worth of work performed, that is, equal work for equal pay or principle of fairness and equity. The Commission provided for the minimum wage as 720 Naira per annum or 60 Naira per month which was salary grade 01, step 1 and the highest salary grade level 17, step 4 was 5,510 Naira per annum, and above salary grade level 17, the Commission provided for super scales for permanent secretaries (Ogunna 1999; Asodike and Jaja 2012).

The salary grades which were considered to be very huge increases than what they were before they were later fine-tuned by Williams Grading Panel. Ogunna (1999) notes that the unified salary structure introduced by the Public Service Review Commission in 1974 marked the beginning of the Federal Government control of the pay system in the Nigerian public service. During the Second Republic, the National Assembly was given the powers for the determination of the salaries of public officers in Nigeria.

Perhaps, the first legislative process to enact national minimum wage legislation in the post independence era started on May 28, 1981 and ended in June 15 of the same year culminating into National Minimum Wage Act of 1981. However, the National Minimum Wage Act of 1981 mandated every employer to comply with wage of 125 Naira as the basic salary per month. Subsequently, in January 1991, the National Minimum Wage Act was reviewed, and workers started to earn a new minimum wage of 250 Naira per month which was an addition of 100 Naira representing a percent increase of 80 percent (Onuegbu 2010).

But the Babangida Regime (1985-1993) made a series of salary reforms and introduced different patterns of salary systems to various professions taking into account the differing job requirement. The universities, the judiciary, the police, prison service, health, etc, were granted differing salary structures higher than those of the civil service yet the Udoji principle of uniform pay for public servants within a particular service in the entire Federation was maintained in all the tiers of government of the Federation.

In addition to this, the Babangida Regime (1985-1993) soon after the 1988 Civil Service Reform appointed the Gray Longe Commission and later the Adamu Fika Panel. The two bodies made substantial reforms in the wages and salaries system of Nigeria. They made major adjustments in the salaries, introduced the elongation of salary structure thereby increasing the numbers of steps within each level and ameliorating stagnation and introducing more items of allowances with substantial amount. The Allison Ayida Panel appointed by the Abacha Regime (1993-1998) in 1997 recommended strongly a substantial review of the wages and salaries of the workers of the Nigerian public servant following its recommendation, the federal government under General Abdulsalam Abubakar introduced a salary structure based on the minimum wage of 3,000 Naira per month for states and local governments and 3,500 Naira for federal workers (Ogunna 1999; Asodike and Jaja 2012).

The pay system introduced in January 1999 under Abubakar Regime (1998-1999) created for the first time, a dual pay structure, one for federal workers, and the other for the state and local governments' workers. The two structures maintained the Udoji Public Service Commission's 17 grade levels, each with a number of steps and super grades for permanent secretaries. The Babangida Regime's elongated steps system was retained, but the steps were not uniform for all the 17 levels. It is structured in such a manner that the higher the level, the less the number of steps which was made to prevent stagnation in annual salary increments (Ogunna 1999; Asodike and Jaja 2012).

The structure for the federal officers has its minimum wage at 3,500 Naira per month or 42,000 Naira per annum which was the salary and allowances for grade level 01, step 1. The last step of level 01, that is, step 15 has the annual salary and allowances of 4,214 naira per month or 50,568 naira per annum. The highest salary, that is, the salary and allowances for level 17, step 9 was 27,405 Naira per month or 328,860 Naira per annum. On the other hand, the structure for state workers has its minimum wage as 3,000 Naira per month including all allowances or 36,000 Naira per annum for level 01, step 1. The highest salary is 21,476 Naira per month or 257,712 Naira per annum including allowances for level 17, step 9. Thus, there was a wide gap in the salaries of state and federal officers taking Nigeria back to pre-Udoji Salary Award era (Ogunna 1999).

On May 1, 2000 under Obasanjo's Civilian Administration (1999-2007), the National Assembly continued with this dual salary structure when it enacted the National Minimum Wage Act to pay a wage not less than national minimum wage of 7,500 Naira per month to all federal workers and oil producing states and then 5,500 Naira to all other states, but this was rejected by the NLC. So, in the same 2000, the Act was amended and the national minimum wage was reviewed upwards for states at 6,500 Naira per month while that of federal workers remained at 7,500 Naira per month (National Minimum Wage Amendment Act 2000; Arizona-Ogwu 2007). For a summary of civil service reforms and wage commissions in Nigeria see Table 1 below.

It was not until 2010/2011 under Jonathan's Administration that the issue of national minimum wage was put on the front burner of national politics. After excessive negotiations and bargaining, the National Assembly enacted a new National Minimum Wage Act which was signed into law by the President Goodluck Jonathan in May 2011 at 18,000 Naira per month for workers of all tiers of government including private sector. As Akunnakwe (2011:56) puts it: On the 23rd February, 2011, the Senate of the Federal Republic of Nigeria approved eighteen thousand Naira (N18,000) as the minimum wage for the Nigerian worker. The bill which was given an expeditious passage by the upper chamber increased the minimum wage from N7,500 to N18,000 (US \$ 118.00).

The section 2 (1) of the National Minimum Wage Act of 2011 states "As from the commencement of this Act, it shall be the duty of every employers to pay a wage not less than the national minimum of 18,000 Naira per month to every worker under his establishment". Thus, the Act abolished the dual minimum wage of Abubakar Regime (1998-1999) and re-introduced the same minimum wage for all the tiers of government in Nigeria.

3. Problematizing Nigerian Fiscal Federalism

Perhaps nowhere in the world, is the issue of fiscal federalism as controversial as in Nigeria. The issue of intergovernmental fiscal relations has raised serious contentions in Nigeria due to dependence on oil revenues. The problem of how to share resources has generated a lot of heat threatening Nigeria's corporate existence. The debate on Nigeria's fiscal relations has been so passionately pursued by various tiers of the federal structure. Agitations are rife, reactions and demonstrations are also witnessed. The challenges of intergovernmental fiscal relations in Nigeria hinges on the equity of the expenditure assignment and revenue raising functions among the three tiers of government (Philips 1971; Ukwueze 2010).

From the inception of Nigerian Federalism, there have developed a mutual mistrust between the central government and the component units, and among the constituent units leading to problems of national question, revenue allocation and agitation for resource control. Nigeria is yet to resolve the issue of how the national resources are to be allocated vertically among the three tiers of government, and horizontally, among the states as well as among the local government units. Nigeria is a mono-cultural economy, in which oil accounts for over 80 percent of its revenue, thus, issue of fiscal federalism is very fundamental, contentions and at the heart of public debate. Consequently, the challenges of fiscal federalism in Nigeria hinge on the equality of the expenditure assignment and revenue sharing among the three tiers of government. This is because the expenditure assignment and revenue sharing have been generally inadequate in addressing the needs and resource gaps in the three tiers of government. The strategy and institutional arrangement for redressing the challenges of sharing national revenue have been approached over the years on incremental basis; beginning with the era whereby a committee was appointed every five years to make recommendations regarding fiscal responsibilities among the tiers of government. However, the 1999 Constitution of the federal Republic of Nigeria, under the Third Schedule, provides for the establishment of a body known as the Revenue Mobilization Allocation and Fiscal; Commission (Bello-Imam and Agba 2004; Akindele 2009; Odoko and Nnanna 2009; Aigbepue and Ainabor 2011).

The point is that revenue sharing and expenditure assignment formula has been generally inadequate in addressing the needs and resource gaps in the three tiers of governments. The strategy and institutional arrangement for redressing the mismatch have been approached incrementally over the years. The persistent discourse on resource control is predicated on the imbalance in the redistribution of the federation revenue which is often attributed to the allocation formula that rewards landmass at the expense of derivation. Thus, the nature of revenue allocation in Nigeria has reflected a character of complexity that is characterized by contestations and disagreements among the various tiers of government as a consequence of the revenue sharing adopted since independence. The sensitivity and lack of consensus among the states have led to the setting up of various ad hoc and permanent revenue allocation commissions. Yet these various revenue allocation commissions were not able to adequately address and resolve the problems of fiscal federalism in Nigeria. In other words, the revenue allocation has been reviewed several times in a bid to find an acceptance formula to no avail (Adesina 1988; Ukwueze 2010; Elekwa, Mattew and Akume 2011).

Ukwueze (2010) notes that all states in Nigeria are not equally endowed with natural resources and this resource gap implies that various levels of government have capacity to develop and grow at different pace. This imbalance creates competitions and tension among the units that make up the Nigerian Federation. The tension generated thus leads to agitation on the best way to share the revenue collected and the urge for appropriate revenue allocation formula. The less endowed states in terms of resources will always insist on equality, population and landmass as a criteria or bases for sharing the revenue. Conversely, the more endowed states especially the oil producing states would always prefer a revenue sharing based on derivation (Onah and Okwueze 2006).

In the same vein, Anyanwu (1999) and Akindele and Olaopa (2002) note that dissatisfaction with the

hitherto existing revenue allocation formula has clearly resulted to the agitations for resource control in Nigeria. Thus, there has been an increasing wave of discordant voices from state and local governments over revenue allocations. This suggests that an appropriate balance is yet to be struck in the use of revenue allocation to correct the imbalance between expenditure and revenue assignments in Nigerian Federation. Thus, Emenuja (1993) and Ukwueze (2010) observe that fiscal federalism has been contentious and problematic in Nigeria. The revenue allocation formula has thus been arbitrary and unstable, and appropriate revenue formula has eluded Nigeria.

Similarly, Arowolo (2011) observes that several attempts were made to achieve harmonious revenue sharing formula among the component units of the federation, but there are still nutty issues challenging Nigerian Federalism and consequently posing serious problems to Nigerian fiscal federalism. Among these critical issues are overdependence on oil revenue, conflicts over revenue sharing formula, centralizing tendency of intergovernmental fiscal relations in Nigeria and the agitation for resource control. Revenue sharing among the component units of Nigerian Federation has from the inception, been replete with agitations, controversies and outright rejections. The process of revenue sharing is inundated with conflicting criteria that were often times rejected by majority of the states in Nigeria.

Arowolo (2011) states that so long as states in Nigeria depend on the federal government economically; the wrangling and controversy surrounding the issue of revenue allocation will remain a persistent or a recurring problem in Nigerian fiscal federalism. The radical change from agrarian economy to oil dependent economy has further propelled dependency, centralism and hegemony of the central government over states in Nigeria. The centralizing tendency of the Nigerian Federalism is as well a legacy of military regimes that used various decrees to institute and consolidate the dominance of the central government over state governments.

In Nigerian Federation, almost every constitutional making process has sought the best way to arrive at equitable distribution of national income. Yet the Nigerian fiscal federalism continued to grant minimal fiscal autonomy to the state and the local governments in terms of revenue allocation. For example, all broad-based taxes such as company income tax, value-added tax, customs and excise duties, petroleum tax, education tax, among others, are assigned to the federal government. Most state and local governments depend largely on federal allocation. There is as well an apparent disconnects arising from expenditure assignment and revenue sharing, but this has not been as visible and controversial as sharing of the national revenue. The major argument against derivation principle centres on spatial disparity and uneven development that it might cause if not properly applied (Teriba 1966; Aigbokhan 2000; Odoko and Nnanna 2009; Aigbepue and Ainabor 2011). For summary of the evolution of revenue commission and allocation in Nigeria see Table 2 below.

4. The 1999 Constitution of Federal Republic of Nigeria and the National Minimum Wage

Under the 1999 Constitution of Federal Republic of Nigeria Second Schedule Part II, labour and minimum wage are within the concurrent legislative list. This means that both the federal government and the state governments can legislate upon the minimum wage for labour in Nigeria but the federal constitution states that where the provisions of the two legislations or the provisions of the laws of the federal government and state governments come into conflicts that of the federal government supersede or prevail. The implication of this is that once, the federal government set the minimum wage for the Federation in its legislation, the state governments cannot legislate any minimum wage below it.

The NLC claimed that the figure, 18, 000 Naira was arrived at after two years of grueling and very strenuous negotiations between the tripartite social partners which included the federal government, state governments, employers associations as represented by Nigeria Employers Consultative Assembly (NECA), Manufacturers Association of Nigeria (MAN), Nigeria Chambers of Commerce, Industries, Mines and Agriculture (NACCIMA) and the workers represented by the NLC and Trade Union Congress (TUC).

According to the NLC in the process of negotiating the minimum wage based on the proposed demand of 50,000 Naira by the labour movement, the committee benefited from presentations from professionals and experts which took into cognizance all economic and revenue profile in the national economy and all tiers of government. This was measured against the general cost of living and income level in the country and the affordability to pay by all employers covered by law (Ajani and Ndiribe 2011).

If indeed all stakeholders were consulted and participated as NLC claims why then did some state governors made a sudden u-turn by refusing to implement the national minimum wage? Assuming that the state governors agreed with the 18,000 Naira without conditions such as re-definition of the basis for Nigerian federalism, resource control, special grants from the federal government, restructuring of revenue sharing formula, etc, why chicken out? For example as Akunnakwe (2011:6) puts it: The state governments are already crying foul over the federal government action. They claim they cannot afford to pay the new minimum wage. This should not come as a surprise to us, knowing fully well that some are owing their workers more than a one month salary. How on earth do we think such states will be able to pay their workers the new minimum wage which is more than 100 percent increase on the old rate?

Even the previous minimum wage of 6,500 Naira per month, only Taraba State agreed to pay in the whole of Northern states, in other words, other Northern states refused to pay or comply (Oyadongha 2000). Under the latest minimum wage regime, state governors differ on the issue of compliance, but they all agreed on the need to restructure the basis of Nigerian federalism as regards fiscal federalism, revenue sharing formula, special grants from the federal government, etc. For example, mainly Action Congress of Nigeria (ACN) governors have agreed to implement the new minimum wage whereas for PDP governors was a political gimmick to be seen as labour friendly or done in attempt to set the stage for campaigns for the next elections by wooing the civil servants and presenting themselves as being committed to workers welfare.

From all indications, the state governors were properly consulted by the federal government and participated and their suggestions factored into the new minimum wage regime. The problem at that time was that the new minimum wage was negotiated in election year, so the governors that had exhausted the maximum term of eight years were indifferent while the ones that were still hoping to be reelected into office easily agreed with the resolution to avoid jeopardizing their political ambition. Even the President was playing safe and danced to labour tune. It was after the election that some of the governors who were assuming office for the first time began to challenge the new minimum wage regime including the re-elected governors who have achieved their political aim. Even the President started delaying over the signing of the new minimum wage bill. The members of the National Assembly were not left out in the political gimmicky as some of them were still nursing the ambition of being returned, and thus, expedited action in passing the national minimum wage bill into law, a typical case of guillotine.

It could be argued that the new minimum wage regime was based more on NLC's bargaining power given the political climate of the time, that is, during election period than on the ability of all the states to pay. For example, Ogunna (1999) posits that of all the criteria for wage and salary determination; the ability to pay is the most crucial as no organization can pay beyond its financial ability. It considers more ability to pay than any other criteria and fixes workers' wages at a rate or level it can pay.

But some state governors on their part were concerned more with policies that can boost their popularity and enable them to be re-elected to office than the ability of their states to pay, and thus, did not make much effort to counter the new minimum wage regime. Some were courageous enough to insist on review of revenue sharing formula or a return to true federalism or fiscal federalism. Thus, the whole phenomenon was like an imposition on states by the federal government and the organized labour. This is so because the new governors were not part of the bargaining process.

5. Differential Cost of Living and National Minimum Wage Debate in Nigeria

Cost of living is not the same in different states of Nigeria which means it varies from state to state and from city to city in Nigeria. For example, the cost of living is higher in Lagos, Port Harcourt, Warri and Abuja than Enugu, Ibadan, Owerri, Kano, Jos, Kaduna, Ilorin, Markurdi, Maiduguri, Benin, and others. Also, cost of living is generally higher in southern states than northern states in Nigeria. Therefore, salaries of workers have more value or higher purchasing power in some states than others, or more specifically, in states that have lower cost of living than the others. Arizona-Ogwu (2007) has noted that cost of living varies with location.

Ogunna (1999) includes cost of living as one of the important determinants of wages and salaries. If the cost of living is high and continuously rising, the wage rates should be high and continuously adjusted to be in tandem with the cost of living. The cost of living determines the living wage in an economy which should be what it cost to maintain an average worker and his family in a year on an adequate level of living beyond the question of affording the basic necessities of life. Living wage therefore should constitute the minimum wage and no wage in an economy should fall below it. The introduction of the minimum wage for workers based on geographical area by the Morgan Commission of 1963 is principally anchored on cost of living. The Morgan Commission of 1963 introduced minimum wage that varied from region to region based on the economic condition of the area most especially cost of living.

Arizona-Ogwu (2007) argues that when a new or minimum wage is introduced, some aspects of the cost of living may be passed to consumers such that the cost of living will go up or the purchasing power will reduce due to inflation occasioned by higher cost of living. It will end up such that the new cost of living or inflationary rate will exceed what the new minimum wage can provide. The point being made is that unified wage or equal pay for equal work for civil servants does not conform to the principle of fairness and equity as NLC contends. This is because of variations in the cost of living across the federation. For example, a civil servant in Zamfara State is likely able to buy more quantities of commodities or afford higher level of comfort than a civil servant in Rivers State, because of the lower cost of living in Zamfara State than Rivers State.

Therefore, any policy of uniform minimum or unified wage pay will benefit workers in some states more than others due to differential cost of living in states in Nigeria and this contradicts the principle of fairness and equity trade unions are insisting on. Thus, uniform minimum wage or unified wage pay is antithetical to principle of fairness and equity.

6. The Agitations of the Trade Unions and the Problem of Enforcement of 2011 National Minimum Wage Act in Nigeria

The labour relies more on its bargaining power especially during election period than other considerations such as ability to pay, cost of living, productivity, etc. Thus, labour insists that it is either the N18,000 minimum wage or nothing. Indeed, labour threatens that the states must comply and implement the new National Minimum Wage Act and nothing less or it will embark on strike. Labour issued two weeks ultimatum for implementation of the new minimum wage regime by states or it will be left with no other option other than embarking on strike. But it must be stated here that minimum wage does not mean uniform wage nor unified wage structure necessary means uniform wages for all the cadres or wage scales in the states, local governments and federal government and this is where labour is getting it wrong. The minimum wage law means that no employer covered by the law such as the federal, states and local governments and organized private sector should pay the least worker less than 18,000 Naira. The implication of this, is that they can pay their least workers 18,000 Naira or above 18,000 Naira but not below 18,000 Naira. So, it does not suggest uniformity.

The import of the above is that the corresponding increase on other grade scales from grade level 01, step 2 to grade level 17, step 9 need not be uniform in all the tiers of government, private sector included though the private sector has different grade scales. But what labour is insisting is that there should be no wage discrimination between federal workers and state workers or even local government workers at the same grade levels and steps throughout the federation. In other words, labour is arguing that Nigeria should return or revisit the Udoji Unified Salary Structure foreshadowed by Sir Walter Harragin Commission 1946 and the Elwood Grading Teams of 1964 based on the principle of fairness and equity, that is, equal pay for equal work.

But this is not what national minimum wage portends. In fact, it means that the state chapters of NLC should go to their respective states and renegotiate on the percentage of increment on other grade levels above grade level 01 step 1 as occasioned by the new national minimum wage regime in Nigeria instead of trying to bargain from the federal level or national office on the uniform or unified wage payment for all civil servants in Nigeria.

If the argument of uniformity is tenable, it would also mean returning to uniform salary scale for all categories of workers including health, universities, etc, as it was obtainable in pre-Babangida's era. The point being made therefore is that trade unions in Nigeria are confusing national minimum wage with uniform wage and salary. Thus, we conclude that the insistence of trade unions on uniform national minimum wage scale hinders the implementation of National minimum wage Act 2011 in Nigeria.

7. Variations in States' Revenue Profile and the Challenges of Implementation of the New Minimum Wage Regime in Nigeria

By the very fact of Nigerian federalism and by logic of fiscal federalism, there are variations or differences in the revenue profile of states in Nigeria. Apart from differences or variations in revenue profile of states, there is also a wide gap between revenue shared by the federal government and other tiers of government or specifically between the federal government and the state governments. For example, in the current revenue sharing formula, the federal government alone is entitled to 52 percent while the state and local governments are entitled to 48 percent, that is, 26 percent for states and 22 percent for local governments. This is why the federal government is not finding it difficult paying the new minimum wage and the states are asking for review of the revenue sharing formula or special grants from federal government for them to be able to pay the new minimum wage or implement the new minimum wage regime.

Moreso, some states are better positioned to pay and implement the National Minimum Wage Act of 2011. This is because of variations in revenue profile of states. For example, generally oil producing states receive higher amount of money from the Federation Account due to constitutional mandate or derivation principle of 13 percent which accrues to states where national resources are derived on the basis of the quantity or volume of the resources exploited. Even among the oil producing states there are variations in revenue derived from the Federation Account, because there are variations in the quantity or volume of oil derived from each oil-producing state.

For example, oil producing states like Rivers State, Delta State, Bayelsa State and probably Akwa Ibom State receive higher oil revenues from the Federation Account than other oil producing states like Abia State, Imo State, Cross Rivers State, Edo State and others. There are also variations in terms of internally generated revenue of states, for example, due to its highly urbanized and industrialized nature, Lagos State generates relatively much higher revenue than other states like Zamfara State, Yobe State, Kebbi State, Jigawa State, Ebonyi State, and others. The point being made is that there are wide variations in the revenue profile of the states in Nigeria and between the states and federation governments. For details of revenue accruing to states and FCT from the Federation Account see Table 3 below.

Thus, Oko (2011) writes that the Abia State Government has called on the federal government to urgently adopt true fiscal federalism as well as review the current revenue sharing formula of the Federation

Account to enable state and local governments to cope with the N18, 000 new minimum wage. The restoration of true fiscal federation has become very imperative in view of the huge financial burden the proposed new minimum wage would place on states. As quoted in Oko (2011:3): The issue of fiscal federalism should be restored. We all know that this country is made up of federation of states and all over the world; federalism has its characteristics features of fiscal federalism. States and regions should be in charge of their natural resources and develop at their own pace and pay statutory rights or royalties to the federal government for the maintenance of her other responsibilities. It is grossly inadequate for the federal government to collect 52 percent of the distributable federal funds and leaving the states and local governments with only 48 percent. If the minimum wage should be properly paid the revenue formula has to be reviewed... the state governments would not be able to discharge other financial responsibilities if they were to implement the new wage except more funds were made available to them.

Also, the Governors from ACN-controlled states echoed the same view when they say that there is need to amend the Nigerian Constitution to pave the way for a return to fiscal federalism. But true federalism and fiscal federalism also presupposes that based on variations in revenue profile of states, the federal government should not fix national minimum wage for the country. It as well means that there should be no uniform or unified salary and wage pay for workers in all the states and local governments of the Federation, and between or among the three tiers of government.

In fact, implementing true fiscal federalism like resource control in mono-product economy like Nigeria where oil and gas accounts for over 90 percent of its revenue will simply lead to the collapse of some states in Nigeria because most of the states depend almost solely on revenue from the Federation Account. The internally generated revenue in most states and local governments are meager. The truth is that going by the size of the Nigerian economy; it is not supposed to have up to 36 states let alone 774 local governments in a three-tiered federation. The point being made is that the Nigerian economy cannot support the 36 states. Many other federations like Canada, Australia, and Germany with the size of economy far larger than that of Nigeria do not have up to 36 states, for example, Germany, Australia, Canada, etc, have less than twenty states.

The fundamental criterion for determining the number of states or constituent units in a federal structure is not population or landmass or even parity, it is viability. It is paradoxical that some geographical regions are lobbying for more states when the existing states are complaining that they are not capable of paying the new minimum wage of 18,000 Naira. It is unfortunate that state and local governments creation in Nigeria has been politicized relegating the principle of viability to the background and elevating the principles of population, landmass and parity high above it. No wonder census figure has been too controversial and political in Nigeria. Once 'true' fiscal federalism becomes operational in Nigeria, many states will simply collapse (Egbo, Okeke and Aniche 2010).

Ogunna (1999) argues that of all the determinants of wages and salaries of workers, ability to pay is the most crucial factor as no organization can pay beyond its financial ability. This is because when an organization is relatively weak financially, it considers more the factor of ability to pay than other criteria or determinants of wages and salaries. It must be noted that there is a difference between willingness to pay and ability to pay. A state may have the willingness to pay, but may lack the ability to pay, vice versa. For example, many states have reiterated their willingness to pay, but regretted their inability to pay. The Abia State Government has restated its readiness to pay the new minimum wage, but regretted that no other project might be executed after payment of salaries except funds accruing to states from the Federation Account are reviewed upwards.

Thus, with the new minimum wage regime, the recurrent expenditure for some states may be ranging from 70 percent to 90 percent of the total budget hereby shrinking the available funds for capital expenditure. No state will develop in this way, and it will just be an accident waiting to happen, because it will not be long before the states will collapse or forced to retrench workers to cut recurrent expenditure. But the politicians and political officeholders are not helping matters at all with the rising cost of governance contributing to the recurrent expenditure. Politicians are to be blamed for the agitations of workers with their ostentations and flamboyant lifestyles like moving in siren convoys of fleet or choice cars as well as the high level of political corruption. Already the trade unions had complained that while the salaries of workers increased by 15% between 2006 and 2007, those of political officeholders increased by over 800%, which further widened the disparity. For rising cost of governance in Nigeria see Tables 4 and 5 below.

Owing to variations in revenue profile, discriminating or varying wage structure can be traced to the implementation of Morgan Commission of 1963 in Nigeria which introduced the minimum wage for workers based on geographical regions which varied from region to region depending on the economic conditions of the geographical regions such as revenue profile and cost of living. Under Babangida Regime (1985-1993), different salary scales for different categories of workers like the universities, health, etc, were implemented, thus, reintroducing variations in workers' salaries and wages. Thereafter, Abdulsalam Abubakar Regime (1998-1999) introduced a different wage pay for federal civil servants and state civil servants which the Obasanjo Civilian

Administration (1999-2007) continued with in 2000. It was the Obasanjo Civilian Administration that tried to introduce different wage pay for oil producing states and non-oil producing states and federal government which NLC rejected.

The trade unions in Nigeria insisted on Udoji's unified and uniform salary structure for civil servants based on the principle of equal pay for equal work also known as the principle of fairness and equity. But this argument is flimsy because there is still differential salary and wage scale for public servants like universities, schools, polytechnics, health, etc. Even the principle of fairness and equity is only "fair and equitable" for workers and not states owing to differential revenue profile. The bottomline is that the variation in revenue profile of states in Nigeria is undermining their respective ability to pay the new minimum wage regime. Therefore, we conclude that variation in revenue profile of states in Nigeria impedes implementation of National Minimum Wage Act 2011 by some state governments.

8. Conclusion and Recommendations

As we noted earlier, The 2011 National Minimum Wage Act raised serious controversy in Nigeria thereby problematizing the nature and structure of Nigerian federalism and fiscal federalism. The conclusions at which we arrived are, one, that the trade unions' insistence on uniform national minimum wage hinders the enforcement of National Minimum Wage Legislation in Nigeria, and two, that the variation in revenue profile of states in Nigeria impedes implementation of National Minimum Wage Act 2011 by some state governments.

On the basis of the above, we recommend, one, for the amendment of some sections of the Nigerian Constitution necessary for 'true' (fiscal) federalism. Two, the restructuring of the Nigerian federalism anchored on the principle of viability. Three, allowing states to have their own minimum wage and wage structure based on their ability to pay and the subsisting cost of living or living wage. Four, reducing the cost of governance and tackling political corruption necessary for taming or curbing the flamboyant and ostentatious lifestyles of politicians. Five, diversifying the Nigerian economy necessary for states to enhance their internally generated revenue and creation of employment opportunities. Lastly, decentralizing labour unions like NLC in line with the principle of federalism as adopted by Nigeria.

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Table 1: A Summary of Civil Service Reforms and Wage Commissions in Nigeria, 1934-2012

Commissions	Year
Hunts Commission	1934
Bridges Committee of Enquiry	1941
Tudor Davies Commission	1945
Harragin Commission	1946
Miller Commission	1947
Hansbury-Gorsuch Commission	1954/1955
Newns Commission (the Elwood Grading Team)	1956
Mbanefo Commission	1959
Morgan Commission	1963
Elwood Commission	1966
Adebo Commission	1970/1971
Udoji Commission	1972
The Cookey Commission	1981
Dotun Philips Panel	1985
The Fatai Williams Committee	1990
The Ayida Panel Review	1994
The Philips Asiodu Committee	1998/1999
Ernest Shonekan Committee	2000
Justice Alfa Belgore Committee	2009/2010

Source: Culled from Onuegbu (2010).

Table 2: Summary of the Evolution of Revenue Commission and Allocation Formula in Nigeria, 1946-1999

Year of Commission	Principles/Criteria and Allocation Formulae
1946 Philipson	Based on Derivation and Equal Development. Grants were solely on derivation. East 24%, West 30% and North 46%.
1950 Hicks-Phillipson	Based on independent revenue, derivation, need and national interest. Same formula as in 1946, except that regions were empowered to impose sales taxes on petrol, entertainment taxes and stamp duties.
1954 Louis-Chick	Federal Government to retain revenue from company income tax, and sales on the export, tobacco, excise; 50% of import duties (except on tobacco and motor spirits) to be shared: West 40%, North 30%, East 29% and Southern Cameroons 1%. Regions to collect and retain revenues from personal income tax. 50% of tobacco export and excise duties and 100% of the duty on petrol to be shared among the regions in accordance with regional consumption.
1958 Raiseman-Trees	Criteria: balanced development, community in regional government service, maintenance of minimum responsibilities and populations. Divided each revenue into three parts: (a) states of origin (b) federal government (c) distributable pool account. For (a) 50% of mining rents and royalties and import duties; for (b) 30% of mining rents; royalties and import duties; for (c) 20% of mining rents and royalties and 40% of import duties. Allocation from the pool account: North 40%, West 31%, East 24%, and Southern Cameroons 5%.
1964 Binns	35% of Federally collected revenue from import duties, mining rents and royalties to be paid into the distributable pool account and shared among regions as follows: North 42%, East 30%, West 30%, and Midwest 8%
1966 Dina	Principles: Basic needs, minimum national standards, population, tax effort, financial prudence, fiscal adequacy, balanced development, independent revenue, derivation and national interest. Segmented revenue into independent and shared, the latter to be allocated between the federal government and other accounts, viz, states joint account, special grants accounts, and derivation account. Excise duty: 60% federal, 30% states joint account, 10% special grants. Import duty: federal 50%, states joint account 50%. Export duty: 15% federal, 10% derivation, 70% states joint account 5% special grants. Mining royalty (in shore): 15% federal, 10% derivation, 70% states joint account, 5% special grants. Mining rent and royalty (offshore): 60% federal, 30% states joint account and 10% special grants.
1970 Decree 13	Rejected Dina report: Revenue distributed among the states on the bases of 50% equality of states; 50% on population. All off-shore revenue accrued to the federal government. In-shore revenue shared as follows: 45% derivation, 50% to the distributable pool account and 5% to the federal government.
1975	Amendment to Decree 13 of 1970 of import duties except on motor fuels, tobacco, wine, potable spirits and beer to the distributable pool account; 100% of the import on motor fuels and tobacco; 50% of the excise duty on any commodity; 100% of the export duty (if levied) on produce, hides and skins; 80% of mining rents and royalties from in-shore operations. All of the above were to accrue to the distributable pool account.
1977 Aboyade	Criteria for state joint account: Equality of access to development opportunities, minimum standards for national integration, absorptive capacity, independent revenue, minimum tax and fiscal efficiency; 50% for the federal government; 10% for local governments; 30% for special grants account. Later to 60% and abolished the special grants account.
1979 Okigbo	Recommendations declared null and void by the Supreme Court of Nigeria.
Revenue Act of 1981	Revenues to be allocated thus: Federal government 55%, state governments 35%, local governments 10%. 35% statutory share of states to be allocated as follows: 40% as equality of states or minimum responsibility of government; 40% on population; social development 15% of which 11.5 % is based on direct primary school enrolment and 3.5% on inverse enrolment; 5% internal revenue effort; 3.5% for mineral producing states of which 2% on the basis of derivation and 21.5% administered by the federal government for the development of the mineral producing areas, 1% to the federal fund for ecological problems.
1989 Danjuma	Vertical allocation: Federal 50%, state governments 30%, Local governments 15%, special funds 5%. Horizontal allocation: 40% for equality of state; 30% for population; 10% for social development factor, 8% direct enrolment and 2% for inverse enrolment; landmass and terrain 10% and internal revenue effort 10%. These were approved by the government.
1999 FMG	Vertical allocation: Federal 48.5%; state governments 24%; Local governments 20%, FCT 1%; general ecology 2%; stabilization 0.5%; derivation (MR) 1%; OMPADEC 3%.

Source: Culled from Ekpo (2004).

Table 3: Federal Statutory Allocations to State and Local Governments for the Period 1991-May 2007

S/N	Beneficiary	State Governments =N=	Local Governments =N=	Total =N=
1	Abia	113,956,322,728.62	66,957,033,320.83	180,913,356,049.45
2	Adamawa	111,973,469,608.66	88,385,118,660.50	200,358,588,269.16
3	Akwa Ibom	384,370,238,540.34	110,896,366,303.24	495,266,604,843.58
4	Anambra	97,592,169,763.11	85,847,453,591.19	183,439,623,354.30
5	Bauchi	128,248,345,518.84	98,833,751,081.01	227,082,096,536.85
6	Bayelsa	414,158,710,867.12	38,101,830,075.82	452,260,540,942.94
7	Benue	120,963,431,284.39	100,676,342,004.41	221,639,773,288.79
8	Borno	127,814,189,455.35	114,329,322,081.28	242,143,511,536.62
9	Cross River	115,403,682,833.25	74,990,493,054.89	190,394,175,888.13
10	Delta	463,459,893,918.76	97,961,571,804.08	561,421,465,722.84
11	Ebonyi	97,825,886,665.52	51,780,333,382.06	149,606,220,047.59
12	Edo	119,085,051,909.31	77,565,785,400.62	196,650,837,309.93
13	Ekiti	92,732,057,109.79	60,134,219,325.71	152,866,276,435.50
14	Enugu	103,979,483,787.19	68,964,491,966.13	172,943,975,753.31
15	Gombe	96,583,878,576.74	49,916,381,357.36	146,500,259,934.10
16	Imo	132,104,455,243.39	99,280,101,362.71	231,384,556,606.10
17	Jigawa	117,009,316,440.23	108,615,763,243.89	225,625,079,684.13
18	Kaduna	138,928,609,161.09	117,182,125,094.69	256,110,734,225.77
19	Kano	179,437,799,067.94	191,497,373,448.88	370,935,172,516.81
20	Katsina	140,721,433,816.83	139,822,729,992.43	280,544,163,809.26
21	Kebbi	109,325,901,797.25	86,787,009,340.22	196,139,911,137.47
22	Kogi	108,937,683,153.98	86,187,515,182.33	195,125,198,336.31
23	Kwara	99,576,991,214.56	66,011,107,696.79	165,588,098,911.35
24	Lagos	182,535,977,642.02	149,392,517,393.59	331,928,495,035.61
25	Nassarawa	90,518,301,030.98	54,487,876,090.81	145,006,177,121.79
26	Niger	126,254,889,591.23	111,114,801,956.06	237,369,691,547.30
27	Ogun	114,180,594,528.10	81,197,512,355.95	195,378,106,884.06
28	Ondo	183,313,507,542.89	74,082,244,267.18	257,395,751,810.07
29	Osun	107,476,926,982.08	102,574,611,292.67	210,051,538,274.76
30	Oyo	135,928,952,381.15	127,369,093,326.38	263,298,045,707.53
31	Platueau	81,759,592,808.53	73,434,508,057.07	155,194,100,865.61
32	Rivers	517,682,993,860.57	104,313,280,579.65	621,996,274,440.22
33	Sokoto	118,067,536,171.07	96,232,809,149.69	214,300,345,320.76
34	Taraba	103,462,234,004.51	72,869,810,839.60	176,332,044,844.11
35	Yabe	104,904,723,192.25	72,326,009,351.84	177,230,732,544.09
36	Zamfara	112,898,217,046.50	70,091,324,490.36	182,989,541,536.86
37	FCT	149,703,394,069.21	43,324,238,682.88	193,027,632,752.09
	Total	5,742,903,843,313.33	3,313,534,856,541.80	9,056,438,699,855.13
38	Federal Government			7,390,688,951,768.72
	Grand Total			16,447,127,651,623.80

Source: Federal Ministry of Finance (FMF), 2008.

Table 4: Salaries of Political Office Holders (Pre and Post Consolidation)

S/N	Categories	HASS (BASIC)	CONSS
1.	Special Assistant to the President Chief Speech Writer to the President Chief Press Secretary to the President	626,700	4,392,012
2.	Members, House of Representatives Deputy Chief of Staff TTP Senior Special Assistant TTP	865,200	13,102,402
3.	Ministers of States Senators Principal Officers of the House of Representatives Special Advisers TTP.	1,015,700	13,374,240
4.	Deputy Speaker, House of Representatives; Ministers; Secretary to the Government of the Federation; Head of Service of the Federation; Chief of Staff TTP. National Security Adviser; Chief Economic Adviser; Inspector General of Police; Chairman, Federal Character Commission; National Salaries, Incomes and Wages Commission; Revenue Mobilization Allocation and Fiscal Commission	1,194,600	15,094,426
5.	Deputy President of the Senate Justices of the Supreme Court President, Court of Appeal	1,403,700	15,240,500
6.	Speaker of the House of Representatives	1,649,400	16,348,926
7.	Vice President of the Federal Republic of Nigeria President of the Senate Chief Justice of Nigeria	1,938,000	21,524,164
8.	President of Nigeria	2,506,000	24,954,405

Sources: National Salaries, Incomes and Wages Commission and Revenue Mobilization Allocation and Fiscal Commission.

Table 5: Estimated Monthly Cost of Meeting Basic Needs for a Member of House of Representatives Family

Item	Cost (₦)
Accommodation	6,000
Utilities	
a. Electricity	1000
b. Water	500
c. Kerosene	4,000
d. Communication	2,000
Food	20,000
Clothing	4,000
Medical	5,000
Education	6,000
Cleaners, Soaps and Detergents	1,300
Entertainments, Recreation and Communication	1,000
Miscellaneous	1,500
Total	58,500

Source: Nigeria Labour Congress Demand for the Review of the National Minimum Wage and General Wage Review.

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