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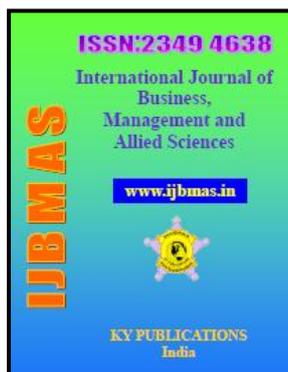
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**FISCAL FEDERALISM: LEGISLATIVE AND JUDICIAL IMPERATIVE FOR REBASING THE
NIGERIAN ECONOMY**

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ABSTRACT

The Ministry of Finance through the Minister and the Coordinating Minister for the Economy, in the wake of dwindling oil prices largely due to the contest between the Oil Sheikhs (the Arab League) and the Shell Men (experienced and competent Oil Men) in a matter of weeks came with the rhetorics of having rebased the Nigerian economy, steering it away from petro-dominance to core fiscal practices. They immediately classified it as being the fastest growing economy in Africa at over six percent, with potential for double digit growth with improvements in power sector. In this work we shall contend that there is more to rebasing than the freak of data politics. We shall be considering firstly, the legal and policy imperatives for sustainable rebasing of an economy and secondly, proffer alternatives to a comprehensive rebasing of the Nigerian Economy; a rebasing driven by comprehensive and all encompassing legal and policy reform framework.

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INTRODUCTION

The Nigerian federalism is in principles significantly volatile. This assertion is largely due to *“the connection between Nigerian Economy and the global markets giving the dominance of oil revenue as a main source of national income and the large proportion of foreign investment in the sector”*.¹ The claim that the Nigerian economy is growing at 6% with potential for double digit growth is essentially from the oil sector. The country boasts in profile as being the richest oil producing nation in Africa, being 10th in the world with respect to reserve base and being the 6th largest oil producing nation in the world.²

¹ Oyebola M. Nigeria Needs Fiscal Transformation. The Nation Monday, December 8, 2014. p. 37

² Ibid.

It is contended that “the recent purported rebasing of the economy has made Nigeria comfortably the largest economy in Africa.”³ We will however differ in opinion, on the following points. Rebasing is a fiscal procedure or process that involves a conscious rebasing in principles of the existing indices of the nation’s fiscal policy consisting notably, the trio of,

- a. Legal
- b. Policy, and
- c. Administrative reforms which must issue from well thought out reform objectives, commencing with;
 - i. A draft bill sent to parliament,
 - ii. Full parliamentary process leading to the passage of a bill for an Act to introduce rebasing and related reforms in the economy.
 - iii. Amendment of existing Acts of parliament that may act as stumbling blocks to the frontiers.
 - iv. Institutionalizing a new well thought out policy objectives and directions. Modernizing existing institutions and strengthening the emerging institutions with strong leadership and complementary regulations.

The full-scale adaptation of Federalism as a system of government in Nigeria commenced with the 1963 Republican Constitution and subsequently the 1979 Federal Constitution with the provisions like; Nigeria ... shall be a federation consisting of states and the Federal Capital Territory’ and that there shall be 19 States namely⁴ This was the Constitutional development that introduced federalism in the 1979 democratic experience. Subsequent democracies in Nigeria have since then practiced Presidential Federalism. Jurists have however contended that the claim of the 1979 Constitution to Federalism was unfounded, largely due to the realism that the practice of the newly espoused creed then conflicted with the hangover of colonial and military rule.⁵

Definition of Federalism

Federalism known in Latin as *fedus*, is a political concept in which a group of members are bound together by covenant on the issue of divided sovereignty between the central governing authority and the constituent political units such as states, provinces or regions.⁶ The power to govern is typically shared between the national and provincial governments. The political obligations of the levels of government are therefore secured by covenant. In a unitary state, sovereignty or political order is non-centralized.

The division of power between the centre and the units usually varies in accordance with the historical, social or economic antecedents of their federalism. Where the federating units existed in full force before the federation, it is unlikely that they would want to surrender all their powers to the central government. Where on the other hand a central government is created which tries to pull together the federating units and consider their interests, such a centre will need to pull as much resources as it can from the units to give it enough power to take such decisions. Thus, whether it is the central government that is feeding the units or the units feeding the centre, would usually dictate the wave of distribution of powers or allocation of revenue. Over two dozen countries consisting of about 40% of the world’s population practice federalism of one form or the other.⁷ Democracies with large territories such as Canada, United States of America, Brazil and Australia as well as those with very large populations such as India, Pakistan, Nigeria and a host of others all run federal states. Therefore, no two federalisms or democracies anywhere in the world are the same.

In general, two extreme types of federalism can be distinguished. At one extreme, the strong federal state is almost completely unitary reserving only a few powers for the local governments, while at the other

³ Ibid.

⁴ See the Preamble to The Constitution of Federal Republic of Nigeria 1999. See also The Preamble to The Constitution of Federal Republic of Nigeria 1999 (As Amended March, 2011) “herein after referred to as The Constitution”.

⁵ Sagay, I.E. A General Overview of the 1999 Constitution. Discussion paper presented at the Retreat of the Joint Committee of the National Assembly on the Review of the 1999 Constitution held at Hydro Hotel, Minna, 16th-17th January, 2009 pp. 10-12.

⁶ www.wikipedia/federalism...

⁷ George Anderson. Fiscal Federalism: A Comparative Introduction. Oxford University Press.

extreme, the national government may be a federal state in name only being a confederation in reality. Some governments like United States of America trace their federal origins back to the 18th century and others like Canada, Switzerland, Germany and Australia trace theirs to the 19th century. Other federations which are more recent include Malaysia, Europe, Spain, South Africa, Ethiopia and Nigeria while others like Iraq and Sudan are still in the process of becoming a federation.

The government of Canada, in 1999, established the Forum of Federations as an international network for exchange of best practices among federal and federalizing countries.⁸

Federalism in Nigeria:

Prior to the British conquests of the different tribes and communities making up the present day Nigeria, they existed as different nations or kingdoms.⁹ Therefore they could be identified as Ibos, Urhobos, Ijaws, Itsekiris, Yorubas, Hausas, Fulanis, Nupes, Kanuris, Ogonis, Igalas, Jukuns, Katafs, Gwaris, Edos, Idomas, Efiks, Ibibios, Tivs, etc. There were also kingdoms like Oyo, Lagos, Calabar, Borno, Bonny, Opobo, Benin, Igala, Fulani emirate, Sokoto caliphate, etc. During the era of slave trade, the British in a bid to protect their lives, properties and trade needed some British presence in their colony. For this reason, the British prime minister, Palmerston appointed John Beecroft as the British consul in Nigeria in 1849. This was the beginning of the British colonization of those independent nations. For administrative ease, the nations which either belonged to the northern or southern protectorates were amalgamated in 1914 to bring about one country known as Nigeria. Each of those nations came with their respective cultures and wealth and there had to be put in place some measures to address the uneven distribution of power and revenue. The measures range from;

1. Federal character principle:

While the quota system operated prior to independence in 1960, the federal character principle was adopted to counteract the nationality question. This principle was entrenched to provide for equitable representation of all sections of the country in government bureaucracies such as appointments, promotions, retrenchment, admissions, scholarships, contract awards, citing of projects, industrial, academic and research institutions, sports and games, army and other fields of play.¹⁰

2. Revenue Allocation:

Upon the discovery of oil in Oloibiri which lies within the present day Bayelsa, the wealth of Nigeria changed from being dependent on agriculture to oil dominance. Most of the areas within the Niger Delta area of Nigeria like Cross Rivers, Akwa Ibom, Rivers, Bayelsa, Delta and Edo states produce oil. Oil has also been found in Ondo, Abia and Imo states. Recently there have been issues about oil being discovered in Anambra and Ibaji area of Kogi state. Over the years, Nigerians have engaged in protests over oil related corruption and environmental pollutions. These have sometimes led to armed violence resulting in killings, kidnappings and wanton destruction of properties.¹¹

By virtue of section 162(1) of the Constitution¹² a Federation Account is created into which all federal revenues except those from proceeds of personal income tax of personnel of the armed forces, police, foreign affairs and residents of the Federal Capital Territory shall be paid.

Section 162 (3) of the constitution provides - Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

⁸ www.oupcanada.com. The Forum is headquartered in Ottawa and has as its members Australia, Brazil, Canada, Nigeria, Ethiopia, Germany, Switzerland, India and Mexico among others.

⁹ Daily Editor. The 1914 amalgamation and how Britain underdeveloped Nigeria. (Dailyindependentnig.com/.../the-1914-...)

¹⁰ Uhunmwangho Sunday Okungbowa and Ekpu Christopher. Federalism: Problems and Prospects of Power Distribution in Nigeria. Journal of Sustainable Development in Africa Vol. 14, No. 4, 2012.

¹¹ Egan, J. (1999). Trobled. Times in the Niger Delta. From <http://news.bbc.co.uk/2/hi/programmes/crossing-continents/325300.stm>

¹² Constitution of the Federal Republic of Nigeria (1999) as amended Cap C. 23 LFN 2004 & 2011.

Any amount standing to the credit of the State in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly. In the same way, the amount standing to the credit of local government councils in the Federation Account shall also be allocated to the State for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.

Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State. Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly. The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.

Currently, the revenue sharing formula from the Federation Account is as follows:¹³

(a) Federal Government	50%
(b) State Government	24%
(c) Local Government	20%
(d) Special Funds	6%
Total = 100%	

The Valued Added Tax (VAT) is also currently distributed as follows:¹⁴

(i) Federal Government	15%
(ii) State Government	50%
(iii) Local Government	35%

On the issue of the nation's derivation formula, Section 162 of the Constitution provides:

- (1) The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenue collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.
- (2) The president, upon the receipt of advice from the Revenue Mobilization Allocation and Fiscal Commission, shall table before the National Assembly, proposal for revenue allocation from the Federation Account, the allocation principle especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density; Provided that the principle of derivation shall be constantly reflected in any approved formula as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

3. State creation:

State creation exercise began with the Gowon administration in 1967, when in the heat of the crisis that later degenerated into civil war, Gowon announced the splitting of the regions into twelve States. In 1975, General Murtala Ramat Mohammed went on to create an additional seven states (7) to bring the total number of states to nineteen (19). This exercise as Murtala himself put it "was to remove to a large extent, the fear of predominance of one region over another." Shagari's administration could not create more states during his tenure because of the intense politics that marred the administration. The regime was finally pushed out in 1983 by the military. Even though Babangida's administration never wanted to be hurried into creating more states, it nevertheless set up the Dr. Samuel Cooley Political Bureau to design political programme suitable for the country.¹⁵ At the end of the exercise, two (2) more states were created and that brought the total to twenty-one (21). Even at

¹³ Victor Lukpata. Revenue Allocation Formulae in Nigeria: A Continuous Research. *International Journal of Public Administration and Management Research (IJPAMR)* Vol. 2 No. 1, October, 2013.

¹⁴ Nigerian Bureau of Statistics. Available at www.nigerianstat.gov.ng/

¹⁵ Nigerian Political Bureau of 1986 – Wikipedia. Available at https://en.m.wikipedia.org/.../Nigerian_...

that, the clamour for more states went unabated and so in 1987, the number of states was increased to thirty (30). The Abacha administration added six (6) more states to bring the overall total number of States to thirty-six (36).¹⁶

4. **Attempts at secession:**

Nigeria had a first taste of an attempt at secession between 1967 and 1970 which was the period of the Biafra war led by Lt. Col. Chukwuemeka Odemegwu Ojukwu. However, any secession attempt is an aberration because it is against constitutional provisions.

5. **The establishment of the Niger Delta development Commission (NDDC):**

This was a federal government agency established in the year 2000 with the mandate of developing the oil-rich Niger Delta region of Southern Nigeria. In September 2008 the then President Umaru Yar' Adua announced the formation of a Niger Delta Ministry, with the Niger Delta Development Commission becoming a parastatal under the Ministry.

With the agitation by oil producing states and communities to have decisive say in the granting of licenses for exploration and exploitation, monitor the extraction process to avoid damage to the environment, to have ownership of the resource revert to the real and natural owners and a host of other things, it became imperative for the issue of resource allocation to be decided upon.

The Transition

The discourse on the wake of the 1978 constitutional conference dwelt more on the theoretical bases for fiscal federalism. The challenge then was how to approach the theory of federalism. In the constitutional conference, Professor Wheare's work on Federalism¹⁷ was a common place. Every participant had the textbook, as if it was the bible for federalism. The challenge of autochthony was thereby sacrificed for fame.¹⁸ Soon we became confused in our framework, and the role of the judiciary rather than assist in deepening our federalism became paramount. It is also worthy to note that they had from the outset kept faith with the demands of the task, notably because of the single jurisdictional provision which makes the Supreme Court the first and final arbiter for constitutional interpretation.

The role of the judiciary in deepening democratic practice commenced, in *Nafiu Rabiu v. Kano State*.¹⁹ Sir Udo Udoma (as he then was) stated that,

... the function of the Constitution is to establish a framework and principle of government. Its broad and general terms are intended to apply to varying Conditions which aid the development of several aspects of the society. Therefore mere technical rules of interpretation of statutes are to some extent inadmissible in such a way as to defeat the principles of governance enshrined in the Constitution.

In *A.G. Bendel State v. A.G. Federation & Ors*²⁰ Eso, JSC (as he then was) observed as follows

It is the primary aim of this court to do substantial Justice, and this should, indeed, be more pronounced in constitutional matters... the jurisdiction conferred upon the Supreme Court in regard to the interpretation and adjudication on the constitution is a special jurisdiction. The court cannot

¹⁶ How Nigeria got to 36 states (Timeline of state creation in Nigeria) Oldnaija. Available at <https://oldnaija.wordpress.com/.../>

¹⁷ Wheare, K.C., Federal Government. Available at <https://www.jstor.org/stable/2125807>. Also in Federalism (social science) in Depth Tutorials and Information on what-when-how.com/.../federalism-social..., he defined federalism as a method of dividing powers so that the general and regional governments are each within a sphere, coordinate and independent. Each government, he said, should be limited to its own sphere and within that sphere, should be independent of the other. To limit each organ to its sphere requires a written constitution which would define the boundaries of authority for each government. Without a written constitution, the national government can easily encroach upon or usurp the authority of the state governments and possibly lead to chaos. See also www.cenresinpub.org/.../FEDERALISM,%20ETHNIC%20POLITICS.pdf Accessed on 17/5/16

¹⁸ <https://en.m.wikipedia.org/.../constitutional.autochthony...> In political science, constitutional autochthony is the process of asserting constitutional nationalism from an external legal and political power. The source of autochthony is a Greek word translated as springing from the land. It is a synonym for native or indigenous.

¹⁹ (1980)8 S.C.130 pp 48-130

²⁰ (1981) 12 NSCC 314 ALP. 395 lines 4-223

justify its usefulness in regard to this particular jurisdiction, by being inhibited with technicalities.

Such inhibition will only serve to destroy the entire constitutional purpose of the court.

This realm of judicial reasoning was in post 1999 democratic dispensation reaffirmed in *A.G. Abia State v. A.G. Federation*.²¹ On the issue of the regulation of Local Councils under the 1999 Federal document, these two issues remain the watershed in the practice of Federalism in Nigeria. Through these cases and related cases, the role of Judiciary in giving vent to democratic norms was strengthened. The judiciary has been up to its task as the director or provider of the intent and meaning of provisions of the democratic Constitution of Nigeria.

However the first era of this transition concentrated on defining federalism and gave little or no emphasis to fiscal federalism. Much of what constitutes fiscal federalism was limited to elements of fiscal policy. By the foregoing, jurists and legal writers saw fiscal federalism from the perspectives of accountants, financial experts and public finance experts. An inclination that paved way for the military, as the then gladiators for all intents and purposes to justify the need for military incursion.

Judicial Foray in Fiscal Federalism

Delivering the lead judgment in consolidated suit of *A.G. Abia, Delta, and Lagos v. AG. Federation & 33 Other States*.²² Niki Tobi J. S. C. (as he then was), said

This is yet another open quarrel between the state and the Federal Government. This Court is by now thoroughly familiar and used to quarrels, as they come before it fairly regularly in the few years or so. The open quarrel dovetails to a subtle one between the concepts of federalism and unitarism in constitutional law and politics. Paradoxically, the two concepts do not have the slightest inkling or knowledge of the open quarrel they are roped in subtly as they remain quiet in reference and textbooks... the cynosure or fulcrum of the quarrel is in respect of some sections of the Constitution of the Federal Republic of Nigeria, 1999 and some sections of the Monitoring of Revenue Allocation to Local Government Act, 2005...²³

From the foregoing the following inference can be drawn;

- i. The judiciary is undisputedly the final arbiter of the direction of our federation.
- ii. The 1999-2007 democratic regime remains the watershed in the development of fiscal federalism in Nigeria.

It is worthy of note that the 1979 democracy was characterized by the then National Party of Nigeria which used the full strength of its presidential autocratic powers to under develop the opposition states in such a way as to ensure a one party unitary state despite the constitutional creed of Federal Republic of Nigeria. The assertion that the Presidential powers if not judicially and judiciously deployed has every tendency to be anti Fiscal Federalism is captured in Section 5(1) sub. {b} of the Constitution of the Federal Republic of Nigeria (CFRN) which provides that, it *"Shall extend to the execution and maintenance of this Constitution and all laws made by the National Assembly and to all matters with respect to which the National Assembly has, for the time being power to make laws."*²⁴ This omnibus provision cannot just be described as anti-fiscal federalism, but anti democracy. For instance the American Constitution only empowers the President of America to defend the American Constitution and Acts of American Congress. Yet he is the most powerful President in the world.

So it is trite that the second leg of Section 5(1) sub. {b} CFRN relating to (Maintenance...) of the constitution is the trouble shooter in our constitutional democracy, largely because you have to go outside the constitution if you must maintain it. So the President of the Federal Republic of Nigeria if not checked by the legislature and the judiciary has all the constitutional powers to be despotic, unitary if he wishes and most crucially a constitution unto himself. The implication of the foregoing is that he has all the constitutional incentive to act extra-constitutionally. President Olusegun Obasanjo²⁵ is a classic case in point.

²¹ 28 March, 2002

²² S.C. 99/2005; S.C.121/2005 and S.C. 216.

²³ Friday, 7th July 2006. S.C. 99/2005; S.C. 121/2005; S.C. 216/2005.

²⁴ Constitution of Federal Republic of Nigeria, 1999 as amended in 2011.

²⁵ The Democratic President of Nigeria from 1999-2007

For example President Obasanjo's Administration from 1999-2003 had almost concentrated the neo-unitary tendency on the empowerment of the office of the then Vice President with the regulation of Local Councils and States. He worked so hard to concentrate the nation's resources at the central government in the guise that local governments were all stealing centres and that state governors were inefficient. This trust of his administration had its high point in a legislation he assented to, titled "*The Monitoring of Revenue Allocation to Local Government Act 2005.*" The obnoxious provisions are sections 1, 3, 6, 8 and 9.

Section 1 tends to empower the central government to send a commissioner to the Joint Local Government Account Allocation Committee.

Section 3 mandates the committee to render monthly returns to the Federation Accounts Allocation Committee.

Section 6 subtly attempts to vest the federal government with regulatory control on the competence of state government to borrow by defining a ceiling.

Section 8 mandates the Accountant General to report to each house of the National Assembly on quarterly bases the payment made to each state and the correctness.

Section 9 mandates the Auditor General of The Federation to report to the National Assembly at the end of each financial year how monies to state for Local Councils were spent. The Supreme court on the brief of *A.G. Abia, Delta and Lagos v. A.G. Federation and 35 Ors*²⁶ in a majority judgment of 5 against 2 dissenting justices forestalled this attempt of the centre to be anti-autonomy, despite being abreast with the fact that autonomy is the core value of federalism. When they held that;

There cannot be autonomy where the federating units are not autonomous and self sufficient. When we say self sufficient we use it in a relative term, referring to the practice where a wealthier component borrows to a poorer component for investment in self sustainable developments. But when the centre enacts subservient legislation that keeps the components coming to, or depending on the centre for recurrent sustenance it makes nonsense of federalism.

Another attempt by the centre to centralize our fiscal federalism, in its bid to drift federal uniterisim was in *A.G. Ogun, Lagos, Oyo, Ondo, Osun v. A.G. Federation*.²⁷ The issues bordered on excesses of central government by

1. Attempting to manage the revenue of the federation through fraudulent accounts
2. Fraudulent and illegal deductions.
3. Paying the central government debts through direct deduction from the federal revenue when it is unshared.
4. Attempting to pay Local Government Allocations directly to the Local Councils.
5. Deduction from Federation to maintain Stabilization Account and deductions of National Judicial Council (NJC) funds from Federation Account instead of the Consolidated Revenue Fund.
6. Refusal on the part of the central government to account for incomes to Federation Account.

By all these, it appears that the central government assumes the breadwinner role in the federation, spending the federation's revenue at will with intention to share whatever is the left over after it has solved all problems that matter to it. However this unanimous judgment contained the illegal acts on the request of well meaning States.

In the case of *A.G. Lagos State v. A.G. Federation*,²⁸ Lagos through appropriate legislative process²⁹ caused a mutation of the Local Councils from 20 to 57. Being an opposition state the President through a circular directed that the state government having conducted election into the councils should have the allocation to Local Councils in its domain.

The contention that it was because Lagos state was an opposition state and that it would not have happened in other States is founded in the fact that Ebonyi, Katsina, Nasarawa, and Niger had also created local councils and their allocations were not ceased. Lagos State Local Councils Allocations was ceased but it

²⁶ Op cit.

²⁷ S.C.137/2001; S.C. 189/2001; S.C. 253/2001; S.C.277/2001; S.C.296/2001

²⁸ S.C.70/2004

²⁹ Local Government Area Law No 5, 2002 of Lagos State.

remained resilient and approached the apex court. It is pertinent to note that the state government sustained the 57 Local Councils throughout the years of the litigation. The main issues contended were;

1. If the President had the power to the funds due to local councils in Lagos State.
2. If the Constitutional power of the President of Federal Republic of Nigeria includes the power of trusteeship of Local Council funds.
3. The frontiers of states and federal government in Local Council creation.
4. A counter claim that the elections to local councils in Lagos State on Saturday March 27, 2004 into 57 Local Councils created under the Local Government Area Law No. 5 of 2002 of Lagos State is inchoate and an order setting aside the election. The apex court decided as follows;
 - i. That the State House of Assembly acted within its powers in creating the local councils, however they are inchoate till gazetted in the Constitution by the National Assembly through a rather less cumbersome amendment procedure.
 - ii. That the Central government is not the constitutional trustee of Local Council funds but rather their state governments.
 - iii. That the central government was not empowered by the Constitution to withhold funds meant for local councils for any reason.

This landmark judgment updates the earlier Nigerian federalists contention that states have no power under the constitution to create Local councils.³⁰ This further buttresses our contention that limiting or viewing federalism from the lens of fiscal policy will create an aberration and confusion. Rather federalism will be realistic in spirit and letters of the foundation federalists, if viewed from a comprehensive value chain called fiscal federalism. Fiscal federalism should in our views embody proactive body of laws, administrative procedures, regular and responsive bye laws and Gazetting procedure and practice. All these fundamentals are to sustain progressive incentives, waivers, tax reliefs and holiday regimes, conditionally backed licensing procedures.³¹

The second leg within the context of the needful is infrastructure. Rebased and realistic fiscal consolidation cannot be achieved until existing infrastructure are modernized and the deficit is accessed. There must also be a compressive review of the existing laws, an inference on areas requiring amendment, and a dossier of the supportive draft bill for legislation and assent by the President.

The third leg borders on ensuring an administrative system, supportive of the new frontiers. It is more of a rape on democracy to come on air to tell Nigerians that their economy had been rebased in a democracy that had destroyed everything that could be called system in public administration and process. The fundamentals of a rebased economy are founded on thoroughly reinvented, rebased and rebranded systems for public administration and process. This contention is founded on the fact that through the Federal, State and Local Councils the executives had a politicized system. This is the affront of the practice where after the monthly ritual of sharing money from federation account, government quarters become ghost towns, except Ministries, Departments and Agencies that manage meaningful revenue heads, such as, Lands, Housing, field department in Works, Produce, Police, Road Safety, Vehicle Inspection Officers, Town Planning/Development Control. The depth of fraud in these bodies is so monumental that huge revenue filter into private hands.³² Staff of this government bodies give rare devotion to duty not because of their love for civil service but because of the tendency towards corrupt enrichment. The truth will be told the day these revenue heads are proactively captured, documented and harnessed to dedicated accounts.

³⁰ Nwabueze B. Federation in Nigeria under the Presidential Constitution at pp131-132

³¹ In our views to back licensing regimes with conditions is capture local and foreign investments that may deploy preemption right, buy back tactics and persistent refusal to go public to repatriate fund habitually from the commanding heights of our economy. E.g. Telecommunication, power sector, Aviation, Agriculture, Oil, Mining, etc.

This is to target the sustenance and buoyancy of the economy through sustained investment windows.

³² www.nigeriansreport.com/2011_04_01_archive.html Accessed on 1/5/16

Fiscal Federalism and Public Finance

Fiscal Federalism is the financial relations between units of government and the public finance practice in a federal system of government.³³ It is viewed as the subfield of public economics concerned with the division of policy responsibilities among different levels of government.³⁴ However the concept public finance is more defined and serious than its patriarch, fiscal federalism. This is because the government of the day can craft a fine piece of budget, medium term expenditure framework and fiscal stimulus paper and yet fail to meet its defined expectations at the end of the given period. As a subfield of federalism, fiscal federalism can be defined as a specific form of public finance organization involving the co-existence of different levels of fiscal powers.³⁵

In the past we heard such phrases like Budget of Hope, Budget of Consolidation, Budget of Stabilization, Budget of Comprehensive Development, Budget of Austerity etc, however we still remain hopeless and helpless, disillusioned, fragmented, and in deep austerity.

A post mortem on our fiscal approaches through our presidential democracies will reveal a failure traceable to a faulty Public Finance System. For instance at a time when millions of dollars are exported out of this country in medical tourism, the Ministry of Health under Professor Grange was said to have shared millions, at the end of the financial year, in 2008.³⁶ While the death toll on Benin-Ore-Lagos road was alarming, the Federal Ministry of Works was said to have returned a whopping ₦40 Billion.³⁷ This money was to be shared by the Minister and key officers, as was the usual practice from military regimes, but for the fear of the embarrassment experienced at the Federal Ministry of Health. In another vein the then Minister for Aviation Stella Oduah was said to have spent millions of tax payers money in US Dollar denomination in acquiring bullet proof cars from BMW,³⁸ only to be parted at the back with membership of the 8th Senate.³⁹ At the Securities and Exchange Commission, upon appointment as the Director General, Orumah Oteh was alleged to have spent a whopping ₦30M, in Hotel bill within an unreasonable time.⁴⁰ The question is how much it takes to build? It should also be called to mind also that 11 days to the end of 1999-2003 President Obasanjo's Government, he awarded a contract for the construction of a house for her.⁴¹ Yet she was allowed to complete her tenure and go home like a heroine.

The foregoing, form a miniature picture of the incompetence in our public finance arrangement, and a good case against the purported rebasing by the then Coordinating Minister for Economy which give room for the following contentions;

1. The legal and administrative frameworks having regard to the stress test it underwent during the President Obasanjo era can be adjudged reasonable more so that the judiciary through the cases had maintained a pro federalist, Fiscal Federalism and Presidential Democratic stand.
2. The aspect of our Federalism that requires urgent rebasing is the structural framework which is essentially the public finance apparatus, of our fiscal federalism. With lenders' apprehension over the capacity of a government to pay if money is borrowed, a former Minister of Finance in the Greek Government suggested not only Fiscal reform but also Structural reform.⁴²

It is an aberration that with development in information technology public funds cannot be effectively managed. For example with an account with any Bank, one does not have to go to the specific branch to transact on the account. Today, accounts can even be transacted internationally through an ATM Card or

³³ Sahara reporters.com/.../fiscal-federalism-development-in-Nigeria... Accessed on 2/8/15

³⁴ www.dictionaryeconomics.com/.../fiscal-federalism-the-new-Palgrave-dictionary-of-econ... Accessed on 17/5/16

³⁵ https://books.google.nl/books?isbn=280441719-dictionary-european-actors-... Accessed on 8/8/15

³⁶ www.abu.edu.ng/publications/2012-10-13-223030_1165.pdf Accessed on 14/5/16

³⁷ news.biafranigeriaworld.com/archive/vanguard/index.php Accessed on 17/7/15

³⁸ www.vanguardngr.com/.../n255m-bmw-bullet-proof-cars-bought-oduah/ Accessed on 21/6/15

³⁹ nigeriavillagesquare.com/forum/archive/index.php/t-69564.html Accessed on 1/5/16

⁴⁰ sunnewsonline.com/.../re-oteh-and-the-legislative-bullies Accessed on 17/5/16

⁴¹ Babajide Kolade Otito-juas panelist in a TVC program (Journalist Hangout) 25th July 2015, 5pm.

⁴² In a BBC Television Interview, BBC TV News 10 a.m Nigerian time Monday 22nd June, 2015

online facility, yet the Bank remains accountable to its shareholders. The level of fraud envisaged in financial transaction since the advent of information technology is such that may involve collaboration with the bank or its staff. Accurate data can exonerate the account holders, and leave the bank with liability for the crime of its employee.

The Rationale for a Rebased Economy

Rebasing of the national account which includes Gross Domestic Product (GDP) is the process of replacing an old base year with a new and more recent base year. The base year provides the reference point to which future values of the GDP are compared. GDP rebasing is the normal statistical procedure in a country to show the market value of all goods and services produced in the country within a given period. It is quite fundamental that the Nigerian Fiscal Federalism requires urgent rebasing. One wonders if this is not a political rhetoric aimed at achieving cheap political goals, mainly to respond to claims of misdirection by opposition. The rebasing envisaged must flow from a thorough assessment of the systems, processes, fiscal bedrocks for assessment of incomes and expenditures. Fiscal bedrocks for definition of revenue heads are IT based accounting systems for all government revenue, penal regimes for tracing and dealing with offences and offenders, the sufficiency and adequacy of the current remunerations for public and civil servants, the role of adequate remunerations in curtailing corruption in public and civil service and the rationale for contracting governments revenues to private bodies. With a comprehensive review of these issues, it is evident that the recent rebasing of Nigeria's Gross Domestic Product (GDP) has firmed up its position by helping to improve the country's profile amongst foreign portfolio investors and foreign direct investors.⁴³ It has firmed up Nigeria's position as an emerging market economy whether or not it is window dressing. While GDP rebasing is commendable, as a measure to achieve economic growth, such growth does not necessarily translate to economic development. The need to ensure sustainability of economic growth is important so that the rationale for rebasing the GDP is not defeated.⁴⁴

In 2014, Nigeria's GDP was rebased after 24 years haven been done last in 1990.⁴⁵ Although this is contrary to international standard which requires rebasing every 5 years, Nigeria is not alone in this laid back approach which affects 18 other countries whose GDP were last rebased over a decade ago.⁴⁶ The rebased GDP figure places the value of the Nigerian economy at \$509.97 billion (₦80.2 trillion). This has made Nigeria to become the largest economy in Africa and 26 largest in the world overthrowing South Africa with a GDP of \$350 billion in 2013.¹ The increase in GDP stems from the increase in the list of activities from 32 to 42, as a result of new sectors such as arts, entertainment and recreation especially music and the Nollywood film industry, food, beverages and tobacco, the electrical and electronic sector, motor vehicle and assembly. All those areas of the economy that were previously looked down on, turned out to be very lucrative and impressive.

The recently completed rebasing of Nigeria's economy was long overdue, necessary, credible and beneficial to the country.

The Constitutional Challenge

Aside the Monitoring of Revenue Allocation Local Government Act of 2005, in 2012 President Jonathan made attempts at amending the Joint Local Government Act through the bill passed in early 2012 for an Act to alter the provisions of the Constitution and to ensure efficient operation of the Local Government Council in Nigeria for the Social, Economic, and Political Development and other matters connected therewith."⁴⁷ To amend there is need to consider if there is justification in subjecting the Local Councils to the whims and caprices of State governments. Definitely there is none. What it simply suggests is

⁴³ Franca Egwuekwe, How sustainable is the effect of Nigeria's gdp rebasing? Posted on Feb. 2015 by Aluko & Oyeboode. (www.aluko-oyebode.com/.../how-sustainable-is-the-effect-of-nigeria-gdp-rebasing...) Accessed on 3/5/16

⁴⁴ Ibid.

⁴⁵ Ngozi Okonjo-Iweala, 20 facts on Nigeria's GDP rebasing & FSS 2020, published in premium times on the 3rd of September, 2015 (www.premiumtimesng.com/.../20-new-facts-on-nigerias-gdp-rebasing-fss-2020.html) Accessed on 19/6/15

⁴⁶ Ibid.

⁴⁷ Joint Account Amendment; As Reps. Confront Governors. Daily Sun, March 23rd 2012, at pp. 37.

that irrespective of any claim of our federation to a three tier federalism, in practice what we have is a two tier federal structure. The approach by President Jonathan seems better, perhaps because of President Obasanjo Administration's littigal blunders on issues of federalism.⁴⁸ With the reading of the bill sponsored then by Hon. Mohammed Ango Abdulahi, of People's Democratic Party, Kaduna State, the floor was agog with the ills of that subjugation of the third tier of our federation to the State Governors and its woes. There is no doubt that the joint account remains one of the classic constitutional injustice inherent in the 1999 Constitution.

To repair this injustice will demand more than what it will take to repair the unjustifiable jumbo pay of the federal legislature. More because while the former is a constitutional issue, the latter is procedural, both are faced with the same challenge because the legislatures and the Governors will polarize any process to so do. Take the current Senate led by Dr. Bukola Saraki for example, despite his party's slogan for change, he was unable to reduce the jumbo ward robe allowance as his manifestation of change. He contended that much had been done with the downward review of the National Assembly's budget to 120 Billion, when the President and his Vice had reduced their take home pay in response to the true spirit of "change."

Conclusion

With dwindling fortune from oil, there is an intense pressure on external reserve leading to a somersault and fall of foreign reserve. Data published by the Central Bank of Nigeria indicated that the reserve fell from \$31.356 billion on February 27th 2015 to \$29.79 as at March 30th 2015. This fall by \$1.6 billion represents 4.9% decline.⁴⁹ The fall is largely due to zero export and heavy dependence on imported goods and services on one hand and greater emphasis on recurrent expenditure leaving the capital expenditure with minimal attention. Rebasing becomes the only option left. However we shall still maintain that the elements or the fundamentals of such rebasing shall be predicated on;

1. A rebased public finance institution that will allow fiscal federalism work.
2. Greater emphasis on capital expenditure.
3. An assessment of existing infrastructure with a view of determining the ones with potentials for modernization and those to be outrightly phased out.
4. Assessment and determination of vital inexistent infrastructures.
5. Evolving a rolling plan within a time feasible for a phased realization of the infrastructures starting with those that will enhance export of readily available products, to those that will generate industrialization.
6. Strict followership and adherence to the rolling plans through political changes from one government to another and from one political party to another.
7. The scraping of one of the Legislative Chambers to reduce cost.⁵⁰
8. A return to the practice of Citizens Legislatures of the 1960's.⁵¹

Federal autonomy should be deepened to guarantee a federal structure instead of the placing states in a position where they will be asking for a bail out from the centre,⁵² or dabbling into the management of local government councils that are within the domain of states.

ⁱ Ngozi Okonjo Iweala, GDP Rebasing, published in This Day Live on Friday 04 September, 2015 (www.thisdaylive.com/.../gdp-rebasing/...) Accessed on 17/9/15

⁴⁸ www.academicjournals.org/.../... Accessed on 23/6/15

⁴⁹ Komolafe B. External Reserve fall by \$1.6bn in March, Vanguard, Thursday, April 2, 2015. pp. 24.

⁵⁰ Demands of Youth Protesters over the Jumbo allowance proposed for the legislatures' of the 8th Assembly. VC. News 10Am Monday 22nd June 2015.

⁵¹ Suggestions of the frontline Political Economist and the Precedent of PAN Atlantic University and Lagos Campus of Harvard Business School. Professor Pat Utomi, On the Jumbo allowance proposed for the legislatures' of the 8th Assembly. TVC.News 10Am Monday 22nd June, 2015

⁵² Arrears of Salary President Buhari meets with governors tomorrow (23rd June 2015) TVC. News 10 Am Monday 22nd June, 2015.