**Resource Control under the Constitution of the Federal Republic of Nigeria 1999: Current Limitations and Proposals for Reform**

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**Abstract**

*Allocation and Control of Resources are essential to the smooth working of a federal system of government because federalism is predicated on the distribution of power, responsibilities and ultimately, resources. In Nigeria, some States within the Federation have agitated for State Control of resources since the return of democracy in 1999 as a result of the Federal Government’s exclusive control over mining of oil and gas and other natural minerals. Oil producing states in the Niger Delta have been in the forefront of this agitation. The paper queries whether the extant constitutional provisions on resource control are sustainable? If empowered, will the states within the federating unit be able to effectively manage their resources? Will the practice of fiscal federalism bring about development within the states? The paper examines the issue of resource control within the Nigerian Federation with the objective of proposing timely and pragmatic solutions to the allocation and control of these scarce resources, over-dependence on oil and the need to find alternative sources of revenue through diversification of the economy. The paper adopts a historical approach/descriptive method and generates data from books, journal articles and internet sources. The paper examines resource control during the pre-colonial, colonial and post-colonial era and recommends constitutional reforms by way of legislative amendment towards the attainment of true federalism and state control of resources.*

**Key Words**: **Constitution. Fiscal Federalism. Niger Delta. Resource Control. Revenue.**

**Resource Control under the Constitution of the Federal Republic of Nigeria 1999: Current Limitations and Proposals for Reform[[1]](#footnote-1)⃰**

**1.0 INTRODUCTION**

Nigeria operates a federal system of government. In a federation, allocation and control of resources are essential to the smooth working of government because federalism is predicated on the distribution of power, responsibilities and ultimately, resources. In Nigeria, some states within the federation have agitated for state control of resources since the return of democracy in 1999 as a result of the federal government’s exclusive control over mining of oil and gas and other natural minerals. Oil producing states in the Niger Delta have been in the forefront of this agitation largely because most of Nigeria’s revenue is generated from the region. Despite generating a huge chunk of Nigeria’s revenue, the people of the Niger Delta region have next to nothing to show in terms of infrastructural development for their enormous contribution to the national purse.

Other states of the federation have continued to clamour for the federal government to find a more equitable formula for sharing the available scarce resources because under the Constitution[[2]](#footnote-2)the federal government has exclusive control over natural minerals. The objective of this paper is to interrogate the sufficiency of the extant constitutional provisions on resource control and whether, if sufficient, are sustainable. There is also the issue of the ability of the states within the federation to effectively manage their resources. Will the practice of fiscal federalism bring about development within the states? The paper examines these issues with the objective of proposing timely and pragmatic solutions to the allocation and control of these scarce resources, over-dependence on oil and the need to find alternative sources of revenue through diversification of the economy.

The paper is divided into five parts. Part One introduces the paper, clarifies concepts used within the paper and gives an historical background to the issue of resource control. Part Two examines the legal framework for resource control under the 1999 Constitution. Part Three examines the criticisms and limitations of the legal provisions on resource control in Nigeria. Part Four proposes reforms to the extant legal regime on resource control and Part Five concludes the paper.

* 1. **CLARIFICATION OF CONCEPTS**

The concepts of resource control, federalism and fiscal federalism employed extensively within the paper are clarified below:

**a. *Resource Control***

There is no unanimous definition of resource control. Its definition is usually a product of the perspective of the individual or group advancing the definition. It has been highlighted that while one group conceives it as a takeover of the resources located in the resource producing states by the people of those states, others understand it to mean that the stakeholders in the resource-bearing area should manage greater proportions of the resources harnessed in those areas[[3]](#footnote-3).

Resource control has been defined as the control and management of resources by State or Local Governments from whose jurisdiction the resources are extracted[[4]](#footnote-4). It has also been defined as the way and manner the government revenue is shared among the various tiers of government as well as how the resources are harnessed and determined[[5]](#footnote-5). It involves access of communities and State Governments to natural resources located within their boundaries and the freedom to develop and utilize these resources without reference from the federal government[[6]](#footnote-6).

A golden thread that runs through the above definitions is that resource control is the effective management of resources derived from any jurisdiction with minimal interference. In other words, the people who inhabit areas where the resources are derived from are entitled to greater autonomy in the determination of how those resources are utilized for the good of their community.

**b. *Federalism***

K.C.Wheare defines federalism as a constitutional arrangement which divides lawmaking powers and functions between two levels of government in such a way that each within its respective spheres of jurisdiction and competence, is independent and coordinate[[7]](#footnote-7).

Under this form of government, the constituent units are only willing to surrender limited powers to the federal government whilst retaining their separate identity. It is a constitutional arrangement for the distribution of governmental power between the federal government and the regional or state governments. A federal state has been defined as a political entity or country where powers and indispensable decisions are exercised and made at two multilateral levels of government in accordance with the strict mutually agreed constitutional provisions of the country concerned[[8]](#footnote-8). Federalism is therefore anchored on consentient relationship and can only exist where there is considerable tolerance of diversity and willingness to take political action through conciliation even when the power to act unilaterally is available[[9]](#footnote-9).

Federalism therefore entails the relative freedom of the people of the component units to determine how they are governed and have considerable involvement in the determination of how their resources are distributed. The constituent units are to determine how much of their resources are surrendered to the federal government and how much of it is retained as well as how the retained resources are utilized within its territory. True federalism guarantees resource control and protects the fundamental rights of both the individual and the federating states. The relative independence and autonomy of the federating units is sacrosanct to the smooth working of a federal system.

**c. *Fiscal Federalism***

Fiscal Federalism refers to the existence in one country of more than one level of government, each with different expenditure responsibilities and taxing powers. Thus, under fiscal federalism, one is subject to the influence of the fiscal operations of different tiers of government. Fiscal federalism is concerned with the relationship among the various levels of government with respect to the allocation of national revenue and the assignment of functions and tax powers to the constituent units in a federation. It is likely that the most important issue in fiscal federalism is revenue allocation formula, the vertical sharing of national revenue among the tiers of government and the horizontal distribution of revenue among states[[10]](#footnote-10).

Fiscal Federalism has also been viewed as the principle by which relations arising from the political decentralization of public sector functions and responsibilities are resolved. The nature and conditions of the financial relations in any federal system is crucial to the continual existence of such systems[[11]](#footnote-11).

The concept of fiscal federalism was first introduced in Nigeria in 1946 under the Richards Constitution. The period between 1947 and 1952 marked the recognition of regional governments with the devolution of power to the Northern, Eastern and Western Regions. With the intervention of the Military in Nigerian politics, regional governments were jettisoned and twelve states were created in 1967. There are currently 36 states, the Federal Capital Territory and 774 local governments in Nigeria.

The issue of fiscal federalism in Nigeria is a burning one, which has witnessed the establishment of several commissions to examine and make recommendations on the issue such as the Philipson Commission(1946), Hicks-Philipson Commission(1951), Louis Chick Commission(1953), Jeremy Raisman Commission(1958), the Binns Commission(1964), Dina Commission(1968), Aboyade Commission(1977), Okigbo Commission(1980) and Danjuma Fiscal Commission(1988).

* 1. ***Historical Background of the struggle for Resource Control***

From the amalgamation of Nigeria in 1914[[12]](#footnote-12), the quest for a suitable and generally accepted revenue sharing formula began. Between 1946 and 1958, four Commissions inquired into Nigeria’s fiscal system to make recommendations about revenue allocation amongst the federal and regional governments. The Philipson Commission recommended three principles for sharing revenue among the regions- derivation, even development and continuity of government services. The 1951 Hicks Commission recommended the following three principles- derivation, national interest and need. The 1953 Chick’s Commission recommended the derivation principle and fiscal autonomy. The 1958 Raisman Commission recommended the sharing of the distributable pool account based on continuity of government services, minimum responsibility of government, need and balanced development.

At independence, the issue of revenue allocation became contentious. In 1964, the Binns Commission recommended increasing the Distributable Pool Account (DPA) from 30 per cent to 35 percent. After the advent of the military in 1966, the carefully developed revenue sharing system was replaced following the centralization of governmental power in the hands of the military. This military intervention was immediately followed by a restructuring of Nigeria into 12 States led by a Federal Government. In 1968, the Dina Commission renamed the Distributable Pool Account (DPA) as the States Joint Account (SJA) and recommended the basis for its distribution as need, minimum responsibility of states and balanced development[[13]](#footnote-13). The centralization of power in the hands of the military weakened the financial base of the States who then became dependent on the Federal Government.

In 1970, as a result of the increasing wealth from the oil windfall, the Federal Military Government under General Yakubu Gowon promulgated Decree No.13 which increased financial allocation to the Federal Government and reduced export duties that went to the States from 100% to 60%[[14]](#footnote-14). The justification for the reduction was that the federal government needed an increased financial base to ensure reconstruction and rehabilitation after the civil war. These changes were strengthened in 1971 by the Federal Government’s distinction between revenue from on-shore and off-shore production of oil and its decision to take over all royalties, rent and other revenues from the off-shore oil production. Revenue, which on the principle of derivation had accrued to those states on whose shore oil was produced, now went to the Federal Government[[15]](#footnote-15).

Under the Military, derivation was gradually jettisoned leading up to the culmination of the current situation where all state governors travel to Abuja, the seat of the Federal Government, cap in hand begging for resources. Notwithstanding its increased financial base, the federal government has yet to ensure national development through the delivery of infrastructures and human capital development. Poverty still pervades the land whilst the Nigerian Elites continue to loot the country’s treasury.

**2.0** **LEGAL FRAMEWORK FOR RESOURCE CONTROL UNDER THE 1999 CONSTITUTION**

Prior to Nigeria’s independence, Nigeria and its resources were regarded as the property of Great Britain[[16]](#footnote-16). The British people laid claim to and controlled the natural resources found in Nigeria without the interest of the colonized people[[17]](#footnote-17). In 1914, Lord Lugard enacted the Mineral Oil Ordinance to secure easy administration over mining and oil rights…and making it a wholly British concern[[18]](#footnote-18). This statute entrusted on Lord Lugard the power to exclusively grant “sole concessionary rights over mining and oil only to British Companies and subjects[[19]](#footnote-19).

With the return to constitutional democracy in 1999, Section 162 (2) of the 1999 Constitution makes favourable provisions for oil producing states. The said Section provides:

162 (1) The Federation shall maintain a special account to be called “the Federation Account” into which shall be paid all revenues collected by the Government of the Federation, except the proceeds 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.

(2) The President upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for the revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles 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. [underlining supplied for emphasis].

Under the foregoing provisions, 13% derivation is guaranteed to the producers of the natural resources. Notwithstanding this guarantee, the oil producing states in Nigeria have repeatedly complained that only 7.9% and not 13% was being remitted by the Federal Government. Former President Olusegun Obasanjo dismissed this clamor as lacking in merit because the states have no visible development for the 13% derivation made available to them[[20]](#footnote-20). There have also been demands by the people of the Niger Delta and other oil producing states for an increase in the percentage of derivation from 13% to 25% [[21]](#footnote-21)and between 25.5% and 50%[[22]](#footnote-22).

Section 153(1) (n) of the 1999 Constitution establishes the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC). RMAFC is vested with the following powers:

1. to monitor the accruals to and disbursement of revenue from the Federation Account;
2. review from time to time, the revenue allocation formula and principles in operation to ensure conformity with changing realities:

Provided that any revenue formula which has been accepted by an Act of the National Assembly shall remain in force for a period of not less than five years from the date of commencement of the Act;

1. advise the Federal and State Governments on fiscal efficiency and methods by which their revenue can be increased;
2. determine the remuneration appropriate for political office holders including the President, Vice President, Governors Deputy Governors, Ministers, Commissioners, Special Advisers, legislators and the holders of the offices mentioned in sections 84 and 124 of this constitution; and
3. Discharge such other functions as are conferred on the Commission by this Constitution or any Act of the National Assembly[[23]](#footnote-23).

Despite the protestations of the people of the Niger Delta and other oil producing states, the RMAFC has failed to yield to the clamor for a change in the revenue allocation formula to meet present realities in line with the provisions of the Constitution. The refusal of the RMAFC to exercise its powers in favour of the people of the movement seeking a positive alteration of the revenue formula should not come as a surprise because its membership is composed of persons appointed by the President. In other words, the loyalty of the members of the RMAFC is to the President and not to the express provisions of the Constitution.

The Constitution, by the provisions of Sections 80 and 81, also establishes the Consolidated Revenue Fund where all revenues or other moneys raised or received by the Federation shall be paid into. The National Assembly is empowered to authorize withdrawals from the Consolidated Revenue Fund through an Act.

The current state of Nigerian Law on natural resources including crude oil is that same is under the control of the Federal Government. The preamble to the Petroleum Act[[24]](#footnote-24) provides as follows:

An Act to provide for the exploration of petroleum from the territorial waters and the continental shelf of Nigeria and to vest the ownership of, and all on-shore and offshore revenue from petroleum resources derivable therefrom in the Federal Government, and for all other matters incidental thereto.

In furtherance of the above, Section 1 of the Act provides for vesting of petroleum in the State as follows:

1 (1) The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the State.

(2) This section applies to all land (including land covered by water) which –

(a) is in Nigeria; or

(b) is under the territorial waters of Nigeria; or

(c) forms part of the continental shelfs; or

(d) forms part of the Exclusive Economic Zone of Nigeria.

(3) In this section references to “territorial waters” are references to the expression as defined in the Territorial Waters Act.

In order to avoid any confusion as to the usage of “State” in Section 1(1) of the Petroleum Act, Section 15 which is the Interpretation Section defines “State” as follows:

“State” except in Section 1 of this Act, means a State of the Federation

It is therefore evident from the foregoing provisions, that the ownership and control of petroleum in Nigeria is statutorily vested in the Federal Government. It is also noteworthy that Section 4 of the Constitution vests law making powers in the Legislative Arm of Government and shares the legislative powers between the Federal Government and the States. The items that are subject of Federal Legislative Powers are contained in the exclusive legislative list[[25]](#footnote-25). Interestingly, Mines and Minerals including oil fields, oil mining, geological surveys and natural gas are exclusively within the legislative competence of the Federal Government through the National Assembly[[26]](#footnote-26). Section 43 of the Constitution guarantees the right to acquire and own immovable property anywhere in Nigeria while Section 44 provides for compulsory acquisition of property. Section 44 (3) however further confirms the vesting of minerals, mineral oils and natural gas in the Federal Government as follows:

44 (3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in, under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

The potency and status of the laws cited above were tested in the *locus classicus* case of *Attorney-General of the Federation* v *Attorney-General of Abia State and 35 others*[[27]](#footnote-27)*.* In that case, the Federal Government invoked the original jurisdiction of the Supreme Court by filing a Writ of Summons pursuant to the provisions of Section 232(1) of the 1999 Constitution against the Defendants and sought reliefs particularly against the eight littoral states of Akwa Ibom, Bayelsa, Cross River, Delta, Lagos, Ogun, Ondo and Rivers jointly and severally for a determination by the Supreme Court of the seaward boundary of littoral states within the Federal Republic of Nigeria. The suit was also commenced for the purpose of calculating the amount of revenue which accrued to the Federation Account directly from any natural resources derived from that State pursuant to the Constitution and other relevant laws.

The agitation of the littoral states in particular was against an attempt to re-introduce the obnoxious classification through the back door using the Supreme Court judgment to rubber stamp it into the lexicon of crude oil exploration with a view to denying the littoral states of revenue accruing from offshore oil drilled in the territorial waters of Nigeria[[28]](#footnote-28). The Federal Government took a stance that the territorial waters from which offshore oil is drilled belong to the Federal Republic of Nigeria and not the littoral sates wherein the territorial waters fall thereby resurrecting the onshore and offshore oil dichotomy[[29]](#footnote-29).

The Supreme Court, in resolving the dispute, per Ogundare, J.S.C held as follows:

The sum total of all I have been saying above is that none of the Territorial Waters Act, Sea Fisheries Act and Exclusive Economic Zone Act has extended the land territory of Nigeria beyond its constitutional limit, although the Acts give municipal effect to international treaties entered into by Nigeria by virtue of its membership, as a Sovereign State, of the Comity of Nations. These treaties confer sovereignty and other rights on Nigeria over certain areas of the sea(the Atlantic Ocean) adjacent to her coastline. As Barwick, C.J put in New South Wales & Ors v The Commonwealth (1975-76) 135 CLR 337 at p. 363

“the international concession was not that the territory of the nation, in a proprietary or physical sense, was enlarged to include the area of water in the territorial sea or the area of subjacent soil. Indeed, the every description ‘territorial waters’ emphasizes in my opinion, that they are waters which wash the shores of the territory of the nation state, otherwise regarded as ending at the margin of the land”

To the extent that the littoral defendant States seek, by affidavit evidence, to prove that these areas of the sea belonged in the past to communities indigenous to these States, I hold that such evidence is nebulous. It falls short of the nature and quality of the evidence required in a case like this where the claim of the indigenous community to ownership of the sea runs against the grain of statutory instruments (Orders in Council) and the common law and international law, too. It is not the case of the littoral defendant States that, like the original American States, the Crown made a grant of the offshore to them or their predecessors in title (that is, the Eastern and Western Regions of Nigeria or the Colony and Protectorate of Southern Nigeria). The mere fact that oil rigs and/or wells located in the offshore areas bear names of indigenous communities on the coastline adjacent to such offshore areas is of no moment in proving ownership to such offshore areas. Such naming, as well as provisions in the various Acts for registration, etc to be in the States adjacent to these areas, is only an internal administrative arrangement made by the plaintiff[[30]](#footnote-30).

His Lordship further held as follows:

I now turn attention to the purported recognition by the plaintiff of the ownership of the littoral defendant States to the area of the sea popularly known as the off shore. The said defendant States rely on the revenue allocation provisions in previous Constitutions and Decrees, particularly Allocation of Revenue (Federation Account etc) (Amendment) Decree 1992 No.106 of 1992… which expressly provided that:

“…in the application of this provision, the dichotomy of on-shore and off-shore oil revenue is hereby abolished.”

All the littoral defendant States harped on this provision to assail plaintiff’s claim which they see as a reintroduction of that dichotomy. With the introduction of federalism in Nigeria, our Constitutions made provisions for revenue allocation among the component units of the Federation. For instance, in the 1960 Constitution that ushered in independence, elaborate provisions were made in sections 130-139 for revenue allocation…Except for the percentage payable, sub-section(1) appeared to be on all fours with the proviso to sub-section (2) of section 162 of the 1999 Constitution for both are based on the principle of derivation...Given the zig-zag history of revenue allocation *vis-à-vis* the derivation principle since, at least, 1960 to date, it cannot be said that the plaintiff at any time admitted that the area of the sea beyond the low-water mark belonged to the coastal Regions or States contiguous to it.

With this conclusion, I hold, and determine, that the seaward boundary of a littoral State within the Federal Republic of Nigeria for the purpose of calculating the amount of revenue accruing to the Federation Account directly from any natural resources derived from that State pursuant to Section 162(2) of the Constitution of the Federal Republic of Nigeria 1999 is the low-water mark of the land surface thereof or (if the case so requires as in the Cross River State with an archipelago of islands) the seaward limits of inland waters within the State[[31]](#footnote-31).

The above judgment of the apex Court was roundly criticized and consequently the Federal Government decided to fashion out a workable solution to the issues which necessitated the commencement of the action in the first instance. A bill abolishing the dichotomy in revenue sharing was sent to the National Assembly, passed and assented to by the President[[32]](#footnote-32).

**3.0 LIMITATIONS ON RESOURCE CONTROL IN NIGERIA**

Federalism demands cooperation between the different levels of government towards the actualization of democratic dividends for the people. The level of cooperation between the Federal Government and the component States determines the success or failure of the system. The extant laws including the 1999 Constitution reveal that the control of natural resources in Nigeria is firmly vested in the Federal Government. This is unconnected with the many years of military rule during which period Nigeria operated a Unitary System disguised as a Federal System of Government. The dependency of State Governments on the Federal Government has reached embarrassing proportions. The Federal government has had to bail out States who were unable to pay workers’ salaries[[33]](#footnote-33). The question then becomes, how many more bail outs would the States require when they are unable to meet their obligations? Why are States unable to meet their financial obligations?

The answer to the above questions is not a simple one. However, a first step in solving the riddle is greater access and control by the States to their natural resources in a manner that reflects True Federalism. The States should not only own and control the resources but determine how much of the resources they are willing to contribute to the Federal purse. When States control their resources, it becomes easier for them to achieve fiscal autonomy and control the pace of their development rather than have the pace determined by the Federal Government.

The other side of the coin is the propensity for political elites entrusted with public funds to corruptly enrich themselves in the process. The current level of Nigeria’s democracy is not one where political leaders are held to account by the electorates on a consistent basis. There is little or no citizen participation in Government and Governance. The absence of citizen participation has led to a lack of transparency in governance paving the way for the arbitrary, unconscionable and wanton looting of the State treasury. Therefore, given the fact that several former Governors are standing trial for corruption[[34]](#footnote-34), some have been convicted in Nigeria[[35]](#footnote-35) and abroad[[36]](#footnote-36), can States be allowed to own and control their resources? What meaningful developments have been achieved by the States from the revenue allocated to them from the Federation Account?

In the case of the Niger Delta, the oil Companies have ongoing corporate social responsibility programs for the people of the region. Funds are remitted to the State and Federal Government as well as Community Leaders. The Youths of the region, for which all these programs are largely carried out, are the ones taking up militancy and blowing up oil pipelines in protest. Naturally, when a pipeline is destroyed, immediately spillage affects land and water of the host community. The Community leaders who are entrusted with funds for their community also dip their hands into the communal cookie jar to the detriment of their subjects. Collectively, funds that are meant for capital projects and recurrent expenditure are siphoned by the political elites. Where attempts have even been made by the government to minimize the hardship faced by the people of the region through establishment of agencies like Oil Mineral Producing Areas Development Commission (OMPADEC), Niger Delta Development Commission (NDDC), Ministry of Niger Delta Affairs (MNDA) and programs such as the Amnesty Program, the political will to see to the actualization of the aims and objectives of these programs are lacking. The continued inability of the Federal Government to find a legal or political solution to these challenges has led to an increase in the demand for resource control and self-determination within the Country.

**4.0 PROPOSALS FOR REFORM OF RESOURCE CONTROL IN NIGERIA**

The imminent need for reform of the revenue sharing formula was re-emphasized at the National Conference 2014[[37]](#footnote-37) where there was a recommendation for rebalancing a vertical allocation of the revenue sharing formula of Federal Government 52.68%, States 26.72% and Local Government 20.60%. The conference also recommended a revised revenue sharing formula of Federal Government 42.5%, States 35% and Local Government 22.5%. For the horizontal sharing formula[[38]](#footnote-38), the factors/principles and percentages are: Equality, Population, Landmass/Terrain, Internally Generated Revenue, Social Development Factors.

The National Conference 2014 recommended the following reforms for the horizontal allocation formula. The Conference decided as follows:

1. That the percentages given to Population and Equality of States in the existing sharing formula be reduced while that assigned to Social Development Factors be increased to a much higher percentage so as to ensure accelerated development of all parts of the country;
2. That three new principles listed hereunder be added to the existing sharing formula to enhance economic, infrastructural and human development in the country;
3. Inverse Primary School Enrolment;
4. Federal Presence; and
5. Unemployment.
6. That the “technical” aspects and details of revenue sharing formula shall be referred to the Revenue Mobilisation, Allocation and Fiscal Commission and the National Assembly for final determination.

The proposed sharing formula by the National Conference is based on (a) diminished emphasis on principles of equality of states and population; (b) increased emphasis on social development factor; and (c) internally generated revenue effort[[39]](#footnote-39).

The recommendations of the National Conference 2014 on allocation of resources/revenue sharing require urgent implementation especially having regard to how Nigeria evolved from an involuntary amalgamation of the Northern and Southern Protectorates in 1914. Nigeria needs to reconsider and renegotiate its continued existence by all ethnic groups in line with the true tenets and principles of Federalism[[40]](#footnote-40). Nigeria currently masquerades as a Federation but is in practice a quasi-Federal Government. The Federal Government created the States and increased the number of States at its pleasure. In an ideal federation, it is the States that donate power and even create a Federal Government. The foundation of Nigeria’s government is defective and cannot sustain the current structure or indeed the superstructure that is envisaged in a democratic society. There must be devolution of powers by the Federal Government to the State and Local Governments. Although, the National Assembly recently passed a law granting financial autonomy to the Local Governments[[41]](#footnote-41), it remains to be seen whether the spirit and letter of the Law will be implemented.

Second, the extant laws reviewed above currently vest ownership and control of natural resources in the Federal Government. These laws need to be speedily amended to reflect the current realities in the Nation. There needs to be an end to the practice of State Governors journeying to Abuja to plead for revenue allocation or financial assistance. This prevalent act of making the journey to Abuja has created a subservient attitude in the State Governors who feel the need to always be in the good books of the President otherwise their State Allocation will be withheld[[42]](#footnote-42). The Federal Government acting like a Parent treats the States as Children. This Parent-Children relationship has stunted the growth of Nigeria’s democracy and by implication the pace of development in the Country. Our laws need to give greater control of natural resources to the State such that the utilization of those resources can be directly felt by the people.

There is also the slight problem of the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) which is constitutionally empowered to review from time to time, the revenue allocation formula and principles in operation to ensure conformity with changing realities. The Commission is composed of appointees of the President whose loyalty lies with the President because the President has an opinion on their appointment. There is consequently a need to amend this provision of the Constitution to ensure that the composition of the Commission is not heavily swayed in favour of the approval of the President.

As a corollary to the above clamor for devolution of power over natural resources to the States, there should be statutory safeguards and the political will to ensure that when the resources are controlled by the State, they are duly accounted for, monitored and effectively utilized. There is also a need for a reorientation of the citizenry to get them more actively involved in the process of governance. Currently, majority of Nigerians do not see the correlation between the activities of political leaders and their immediate or future predicament. Active mass reorientation of the citizenry by civil society groups and the government would go a long way in ensuring that citizens demand transparency in the disbursement of funds accruing from State owned natural resources.

The Anti-Graft Agencies such as the Economic and Financial Crimes Commission (EFCC) and the Independent and Corrupt Practices Commission (ICPC) need to be strengthened and given financial autonomy to be able to perform their statutory functions. It is however unhelpful that the agencies pander to the dictates of the President and the Federal Government. In recent times, the agencies have been used by the Presidency as a tool for fighting political battles and suppressing political opponents rather than as an unbiased anti-corruption watchdogs.

The Federal Government also needs to diversify its economic dependence on crude oil and venture into other areas such as Agriculture, Information Technology and Manufacturing. This diversification becomes even more necessary with the global shift in crude oil dependence and the impact of drop in oil prices on National Development.

Lastly, it is recommended that there is an urgent need for consensus on the direction of Nigeria’s democracy. It is no longer practicable for Nigeria to continue to play the ostrich with the litany of agitations from several ethnic groups for control of their resources as well as their collective destinies. This consensus in nation building must not take the form of previous national conferences where delegates from various parts of the country aggressively put forward their respective positions only for the final report to be either discarded or confined to the dust bin of history. There must be a genuine political will for such consensus to be immediately adopted by the National and State Houses of Assembly as the will of the people. Nigeria cannot afford to continually suppress legitimate agitations of various ethnic groups in the quest for resource control under the guise of Federalism. It is further recommended that the Country must not look elsewhere for a model of federalism to be adopted but must evolve its own Federal system based on the peculiarities of its people with globally accepted features of a federal government as minimum standard. In other words, state governments must unanimously agree to donate power to the center. Only then, can the States and Local Governments determine how much of their resources go to the Federal Government and how much goes to infrastructural development for the benefit of its people.

**5.0 CONCLUSION**

As discussed above, Nigeria needs to practice Federalism in line with its undiluted tenets and principles. The current arrangement where the Federal Government owns all the natural resources and gives at least 13% under the principle of derivation is unrealistic and unsustainable. The extant laws on resource control do not reflect true federalism or indeed the reality of modern day government. The proposals canvassed above have to be religiously implemented to enable the Country experience rapid development and ensure the good of the citizenry as well as the continued sustenance of our nascent democracy. The Country’s fortune cannot continue to oscillate based on the price of crude oil in the International Market. There is an urgent need to amend the extant laws and device new strategies for revenue generation for the Country. Revenue generated by the States and the Federal Government should be equitably shared in a manner that guarantees the just utilization of the resources for local and national development in line with fiscal federalism. It is only when these proposals are implemented that there can be a reprieve from the legitimate agitation for state control of natural resources.

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6. *Ibid.* [↑](#footnote-ref-6)
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9. J.C.Ebegbulem, Federalism and the Politics of Resource Control in Nigeria: A Critical Analysis of the Niger Delta Crisis. *International Journal of Humanities and Social Science* Vol.1 No.12 September, 2011 pp 218-229. [↑](#footnote-ref-9)
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12. This was the unification of the Northern and Southern Protectorates by the Governor-General of Nigeria, Lord Lugard. [↑](#footnote-ref-12)
13. M.Abdullahi Politics of Resource Control and Revenue Allocation: Implications for the Sustenance of Democracy in Nigeria. *Journal of Politics and Law* Vol.7 No.4 2014 pp 176-180. [↑](#footnote-ref-13)
14. R.A.Dunmoye *Resource Control: Which Way Forward?* News Letter of the Social Science Academy of Nigeria. [↑](#footnote-ref-14)
15. M. Abdullahi, *ibid* pg 177. [↑](#footnote-ref-15)
16. I.Sagay, Ownership and Control of Nigerian Petroleum Resources: A Legal Angle, *Nigerian Petroleum Business: A Handbook* 1997 (Victor Erotosele, ed) at p.8. [↑](#footnote-ref-16)
17. T.Okonkwo, Ownership and Control of Natural Resources under the Nigerian Constitution 1999and its Implications for Environmental Law and Practice, *International Law Research Vol.6 No.1, 2017* Canadian Center of Science and Education. [↑](#footnote-ref-17)
18. Section 6(1), 1914 Mineral Oils Ordinance, Laws of the Federation of Nigeria and Lagos (In Force 1 June, 1958(1959)). [↑](#footnote-ref-18)
19. P.O.Okonmah, Rights to Clean Environment, The Case for the People of Oil-Producing Communities in the Niger Delta, *Journal of African Law* Vol 4 No.1pp 43-67. [↑](#footnote-ref-19)
20. Vanguard Newspaper September 11, 2002. [↑](#footnote-ref-20)
21. This was the position of the South-South Delegates to the 2005 Constitutional Reform Conference in which they staged a walk out. [↑](#footnote-ref-21)
22. This was the position of the South-South Delegates at the 2014 National Conference. [↑](#footnote-ref-22)
23. Third Schedule Part 1 of the 1999 Constitution. [↑](#footnote-ref-23)
24. Cap P.10 Laws of the Federation of Nigeria 2004. [↑](#footnote-ref-24)
25. Second Schedule Part I to the 1999 Constitution. [↑](#footnote-ref-25)
26. *Ibid*, Item 39. [↑](#footnote-ref-26)
27. (2002) 6 NWLR (Pt.764) 542-905. [↑](#footnote-ref-27)
28. A.J.Ikpang, The Legal Chasm Between Resource Control and The Determination of the Seaward Boundaries of the Littoral States in Nigeria, *Nnamdi Azikiwe University Juournal of International Law and Jurisprudence* Vol 2. 2011. [↑](#footnote-ref-28)
29. Made prominent by the Oil Revenue Act No.9 of 1971 which vested all offshore oil revenue and the ownership of the territorial waters and the continental shelf adjoining littoral states in the Federal Government. [↑](#footnote-ref-29)
30. Pg 652-653 paragraphs D-C. [↑](#footnote-ref-30)
31. Pg 653 paragraph F-G; 654 A and H; 660 E-G. [↑](#footnote-ref-31)
32. Allocation of Revenue (Abolition of Dichotomy in the Application of Principle of Derivation) 2004. Signed into Law by President Olusegun Obasanjo on 16th February, 2004. [↑](#footnote-ref-32)
33. In 2015, a salary loan of about =N=338 Billion was disbursed to States at 9% Central Bank of Nigeria rates. In January, 2016, =N=7.85Billion was approved by the Federal Government to assist States with revenue short fall. See <[www.vanguardngr.com/2017/04/fg-provided-n1-75tn-extra-statutory-bailout-fund-states-budgit/](http://www.vanguardngr.com/2017/04/fg-provided-n1-75tn-extra-statutory-bailout-fund-states-budgit/)> accessed on 15/7/2018. [↑](#footnote-ref-33)
34. Former Governors Orji Uzo Kalu of Abia State, Jonah Jang of Plateau State, Ibrahim Shema of Katsina State, Rashidi Ladoja of Oyo State, Mukhtar Ramalan Yero of Kaduna State and Otunba Gbenga Daniel of Ogun State are all standing trial for corruption related cases. [↑](#footnote-ref-34)
35. Jolly Nyame of Taraba State and Joshua Dariye of Plateau State were this year 2018 convicted by Honourable Justice Adebukola Banjoko of the High Court of the Federal Capital Territory for corruption and misappropriation of funds during their tenure as Governor. [↑](#footnote-ref-35)
36. James Onanefe Ibori, former Governor of Oil Rich Delta State was sentenced to 13 years in prison by a United Kingdom Court after he admitted 10 Counts of Fraud and Money Laundering. He was in December, 2016 released after serving half his sentence. He has lodged an appeal against his conviction. [↑](#footnote-ref-36)
37. National Conference Report 2014, p. 153. [↑](#footnote-ref-37)
38. This allocation formula is applicable to the 36 States and 774 Local Governments only. [↑](#footnote-ref-38)
39. National Conference Report 2014, p.154. See also E.O.Oyewo, Nigeria: What Manner of Federation is this? *University of Lagos Inaugural Lecture Series 2019*, pp 42-43. [↑](#footnote-ref-39)
40. There have been several constitutional conferences in Nigeria with the most recent being the 2014 National Conference which held under the Goodluck Jonathan Administration. [↑](#footnote-ref-40)
41. The Bill was signed by President Muhammadu Buhari in 2018 as part of the Fourth Alteration Bill. See <[www.punchng.com/taraba-assembly-lauds-buhari-for-signing-lg-autonomy-law/](http://www.punchng.com/taraba-assembly-lauds-buhari-for-signing-lg-autonomy-law/) >accessed on 16/7/18. [↑](#footnote-ref-41)
42. As was the case of Lagos State during the tenure of Asiwaju Bola Ahmed Tinubu due to his rift with Presdient Olusegun Obasanjo between 2003 – 2007. [↑](#footnote-ref-42)