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Law and Sustainable Development in Africa

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grass root dwellers to benefit from it. The paper further finds that the law is silent on the language to be employed in impacting tax education. This is a serious lacuna that can hinder law and sustainable development in Nigeria.

■ Recommendations

In order to ensure an achievement of good

CHAPTER SEVENTEEN

THE NIGERIAN CONSTITUTION, TAXATION AND SUSTAINABLE DEVELOPMENT

HAFSAT IYABO SA'ADU*

Introduction

The basis of the Federal arrangement, especially on the issue of taxation is the division of powers generally, including taxing powers which must be embodied in a Constitution. The Constitution must be supreme over both the federal and the state governments, and override any act done by any of them in violation of those acts.¹

The 1999 Constitution (as amended) thus declares any law contrary to the provisions of the Constitution as inconsistent and that the provisions of the Constitution shall prevail and such law shall be void to the extent of its inconsistency.² This principle was adumbrated by the Supreme Court in the case of *Attorney-General, Abia State v. Attorney-General of the Federation*³

It is important to note that no aspect betrays the centralized nature of the Nigerian federalism more than its tax system. This has made it imperative for the Federal Government to share the bulk of its revenue with the states.⁴ However, the determination of the appropriate formula for revenue allocation has always been a constant source of disputes and controversies.

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¹ See the Principle of Supremacy of the Constitution as enshrined in Section 1 (3) of the 1999 Constitution of the FRN.

² Section 1(3) 1999 Constitution of the FRN

³ (2002) 6 NWLR (Pt. 763) p. 476 See also *Attorney-General, Federation v. Attorney-General, Abia State* (No.2) (2002) 6 NWLR 542

1960 till date the revenue allocation system can neither be said to be efficient or equitable.⁵

The trademark of federalism is that all levels of government have a significant amount of separate and autonomous responsibilities for the social and economic welfare of those living within their respective jurisdictions.⁶ This can be done by having one, two or three lists of matters, depending on the techniques adopted by a particular country. The enumeration can be made under one list of matters exclusive to either National or Regional governments, or there may be two or even three lists, one for the federal government exclusively, one for the state government exclusively and another concurrent for both.⁷

Therefore, for there to be efficient sustainable development and to improve the economic well-being of Nigerians, the Nigerian government should encourage the derivation principle in her revenue allocation formula in a way that will promote peace and development.

In this paper, we shall be considering how the Nigerian Constitution can enhance sustainable development in the revenue generation of all strata of the government. An attempt is also made to examine the issues and challenges which are impediments to the path of harnessing taxation as a tool for national

⁵ See [<accessed on 30 November, 2011>](http://www.medwelljournal.com/fullex/), the imbalance in the revenue allocation associated with the system has culminated in the combined effects which has affected the Nigerian Federal System as a whole and has resulted in the lack of sustainable development in Nigeria particularly in the Niger Delta Region. For instance, the Federation Account Allocation Committee (FAAC) has met and shared the sum of N611,433 billion for the month of September using 52.68% as the formula. The FG got N260.719 billion, States Governments 26.72% got N132,260 billion while local government 20.060% got N101.952 billion. See [<accessed on 30 November, 2011>](http://www.fmf.gov.ng/)

⁶ The CITN Tax Guides and Statutes, 2009 p. 63.

⁷ Ibid

Definition of Taxation

The National Tax Policy defines taxation severally as follows:⁸

- "The process of collecting taxes within a particular location".
- "a monetary charge imposed by the Government on persons, entities, transactions or properties to yield revenue".
- "a monetary charge on a person's or entity's income, property or transaction and is usually collected by a defined authority at the Federal and State Level".
- "enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of Government and for all public needs"
- Taxation is not a voluntary payment or donation, but an enforced/compulsory contribution, exacted pursuant to legislative authority"
- Taxes may be direct or indirect and may be imposed on individual basis, on entities, on assets and on transactional basis.

Taxes are levied on:

- A. Individuals (personal income tax, development levy)
- B. Companies (Companies Income, Petroleum Profits and Education Tax, Technology Level)
- C. Transactions (VAT, Capital gains, Stamp duty, Import duty, Export duty, Excise duty)
- D. Assets (Property tax, taxes on land)

Taxation should possess the following qualities:⁹

- a compulsory payment
- a payment to the government for common benefit.

⁸ See [<accessed on 5 July, 2011>](http://www.citrn.org./others/Nationaltax.pdf)

⁹ Onoja P. *Nigerian Taxation for Professionals* (NP, Jos 2002) p.1

Constitutional History of Nigerian Tax Laws

Like most federal systems, Nigeria has a revenue distribution system in which the national government shares revenues with the state and local government since early 1970s.

In 1963, Nigeria became a Republic, all the regions assumed jurisdiction over the income tax of persons resident in their region while the federal government assumed jurisdiction over taxes in respect of individuals resident in the Federal Capital Territory of Lagos and those of companies.¹⁰

In 1967, the then Federal Military Government created 12 states. Each state applied their own Personal Income Tax Law until the introduction of the Uniform Taxation Decree in 1975 which gave autonomy to the states in fixing their own rates and allowances.¹¹

By 1976 when 19 states were created, the states assumed jurisdiction over personal income tax and applied the personal income tax laws of the state out of which they were created. The same thing applied to the present 36 states.¹²

Commenting on the above, Ayua¹³ quoting A.O. Philips¹⁴ says:

Personal income tax has all the time been the problem item of Nigeria's revenue structure particularly since its regionalization in the late 1950s. Nigeria is the only Federation in the World in which a significant tax such as this is vested in other hand rather than the central authorities.

throughout the country... unless and until a uniform personal income tax system is established in Nigeria the tax cannot play the significant role it should play in Nigeria's revenue structure and economic development.

The 1979 Constitution has enhanced the Federal Government's taxing power by placing important taxation within its exclusive competence, while leaving the residuary at the disposal of the states.¹⁵

Thus, under the Exclusive Legislative List set out in part 1 of the second schedule to the 1979 Constitution, the Federal Government has exclusive jurisdiction on the following taxes:

- (1) Item 15: Custom and excise duties
- (2) Item 22: Export duties
- (3) Item 37: Mining, rents and royalties
- (4) Item 57: Stamp duties
- (5) Item 58: Taxation of incomes, profits and capital gains except as otherwise presented by the 1979 Constitution. Under this item the Federal Government has exclusive power to legislate on the taxation of individuals and companies throughout the whole federation.

The 1999 Constitution merely adopts the above position.¹⁶

In 1990, all tax existing statutes with all their amendments were codified under the Laws of the Federation of Nigeria (LFN).

Also, in 2004, there was another codification of all tax laws in Nigeria. For example, Personal Income Tax was amended and codified and it became Personal Income Tax Act (PITA) Cap. P. 8 2004 Laws of the Federation of Nigeria (LFN)¹⁷

¹⁰ Ibid p.122

¹¹ Ibid

¹² Ibid

¹³ Ayua I.A. *The Nigerian Tax Law* (Spectrum Law Publishing Ibadan, 1996) p. 29

¹⁴ Nigeria's Tax Effort' (1970) B.T.R 180 at p. 186

¹⁵ The Nigerian Tax Law P. 30 and section 2(1) of Decree No. 1 of 1984

¹⁶ See Part II of the Concurrent Legislative List of 1999 Constitution of the FRN

¹⁷ CITN Nigerian Tax Guides and Statutes 2009 p. 122

World Commission on Environment and Development (WCED) defines sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.¹⁸

According to the National Tax Policy,¹⁹ sustainable development in this context refers to the pattern of revenue generation, which is able to meet the needs of the present generation of Nigerians without negatively impacting the ability of future generations to meet their own needs.

Generally taxation is looked upon as a sustainable source of government revenue due to the stability and certainty of the tax system. Unlike other sources of revenue, taxes are constantly available in so far as economic activity is carried on in the society. Recent developments in the global and local economies which have significantly impacted government revenue have directed focus on taxation as a sustainable source of income.

Taxation can play a significant role by securing a stable flow of revenue for the government. Currently, Nigeria is viewed as a mono-product economy with reliance on oil revenue due to historical developments. However, taxation has been identified as the best alternative to oil revenue and a more reliable source of revenue because it is constant and available.²⁰

The tax policy provides for healthy competition amongst tax and revenue authorities in Nigeria at the federal and state level to facilitate rapid development of the tax sector. This competition which focuses on how to maximize tax revenue within the jurisdiction of each government in line with Constitutional and Statutory provisions brings about positive developments within

¹⁸ Dokun Oyeshola, O.P. *Sustainable Development: Issues and Challenges for Nigeria* (Daily Graphics Nig. Ltd, Ibadan 2008) P. 161.

¹⁹ See The National Tax Policy for Nigeria www.citn.org/others/Natonaltax.pdf, accessed on 5 July 2011.

²⁰ Ibid

in achieving healthy competition amongst tax and revenue authorities, there is need to strike a balance. This can be achieved by ensuring that the ratio that drives allocation of revenue collected from any source has built-in mechanism for rewarding and recognizing arms of government that demonstrate effective utilization of revenues, investment promotion, infrastructural development and economic activity amongst others.²¹

It is the aim of the Nigerian Tax policy to uphold the application of fiscal federation in the revenue generation and expenditure by all tiers of government in accordance with the provisions of the Nigerian Constitution. In this regard, it is expected that the tax policy and other tax legislation, would resolve the issue of who collects what, how it is collected, who controls what is collected, how what is collected is shared, who is responsible for spending what is collected and who is ultimately responsible and accountable to the tax payers for the revenue collected and its expenditures.²²

The policy, though seems to take care of the problems of the Nigerian tax system, has not been implemented accordingly. For example, the taxpayers do not have data with respective regulatory authorities. The policy should lead Nigeria to a good tax system and tax laws which will pave way for the growth and development of the generality of Nigerians.

It is important to reiterate here that the National Tax Policy seeks to provide a set of guidelines, rules and modus operandi that would regulate Nigeria's tax system and provide for a viable tax legislation and tax administration in the country. Since the approval by the Federal Executive Council, not much has been heard about the policy, which is designed to be the template on how the tax system should be run and administered at all levels of government in the country.

²¹ Ibid

²² Ibid

not lose sight of the prevailing situation in Nigeria at the moment. With the deteriorating infrastructural facilities and crippling power supply, the transaction costs for organizations and the concomitant effect on product and distribution of goods and services have invariably and connectedly been increased. Any tax reform that does not take cognizance of these might not achieve its end views. At best, business outfits would have no option than to find dubious means of evading tax or conniving with the collectors so as to under-pay them. Ultimately, an effective and efficient tax system would in the end enable Nigeria to compete globally²³ and achieve the desired development envisaged under the sustainable development concept.

How Taxation Facilitates Development

The overall focus of taxation has always been to provide resources for the development of the economy and improving the wellbeing of citizens from whom these taxes are collected. National Development in this sense refers to the increasing ability of a country to improve the social welfare or standard of living of its people by the provision of infrastructure and social amenities in the areas of security, education, food security and health etc. Importantly, it extends to the development of the citizens by improving their personal, social, emotional and psychological wellbeing.²⁴

The discourse on National Development should be about how it impacts the personal wellbeing of the citizen, not just in terms of providing him income, shelter, or food, but how it enables him to aspire to improve his lot, make innovations, face and conquer challenges, affect his environment and achieve his personal

²³ See <http://www.indefenceofliberty.org/story.aspxpid-805> & pubid-527<accessed on 4 February, 2009

²⁴ Ifueko Omoigui. Okauru, "Taxation for Development: Issues & Challenges" (Paper Presented at the 44th Annual Conference of Nigerian Association of Law Teachers held in Port-Harcourt, Rivers State between the 17th – 21st of July, 2011.

meeting basic needs to being able to realize their full potentials as individual members (self-actualization) of the nation.²⁶

On the other hand, taxation incorporates a kind of system by which government realizes revenue to provide governance to its citizens within its jurisdiction. In discussing taxation, there are four Rs, which set out the main purpose of taxation. They are:²⁷

- Revenue (generation), which illustrates that the main purpose of taxes is to raise revenue for use by Government in achieving its developmental goals;
- Redistribution, which illustrates that taxes may be used to transfer wealth from one section of the society to another by collecting taxes from the more wealthy members of the society and utilizing it to provide infrastructure, social services and other needs of the lower income members of the society;
- Re-pricing, which illustrates that taxes may be used to address externalities i.e. fiscal policies may be used to affect some area of the economy, which cannot otherwise be done; and
- Representation, which is the historical basis for taxation and states that taxes are imposed to assure citizens of representation in the governance of the society. In this regard, rulers impose taxes and citizens demand accountability in return.

The focus should be on how taxation as a concept and its guiding philosophy of citizen participation in development can lead us all to embrace our National Development goals and work in a focused and determined manner to achieve them. The critical contribution of taxation is to encourage citizen participation and ownership of the process and programs aimed at national development.²⁸

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

²⁸ Ibid

There are certain challenges which are impediments in the path of harnessing taxation as a tool for national development in Nigeria. These are:²⁹

Lack of tax culture

Though the tax policy and our tax laws provide the platform for creating a tax conscious citizenry; there is need to go beyond educating the citizenry on the tax system, its role in National Development and the expected contribution from various groups of Nigerians, to create and inculcate a tax culture amongst Nigerians. This is very necessary if government is to attain its goals of diversifying the Nigerian economy and obtaining sustainable and stable revenue from taxation.

Lack of proper accounting for revenue collected

At the completion of the tax administration process, it is expected that tax revenue would have been paid by the taxpayers and collected by the tax authority.

At the end of the compliance process, the tax authority is required to account for revenue collected. This process is not usually open to the taxpayer or the general public and may therefore not be treated with deserving attention. Accountability for tax revenue can be achieved in the following ways:³⁰

- regular and timely publication of revenue collected in widely available mass media, such as newspapers, magazines, National Television and Radio Stations and the internet;
- storage of revenue information in electronic format, which is accessible to the general public; and
- holding of regular forums, where there is interface between revenue authorities/government and the taxpayers/general public and where the disbursement and utilization of tax

²⁹ See www.citn.org/others/Nationaltax.pdf <accessed on 5 July 2011>

³⁰ Ibid

Over-dependence on oil revenues

Nigeria has, over the years, placed a significant reliance on oil revenue due to historical developments in the Nigerian economy. There is need to promote and encourage a shift in focus from non-tax revenue to tax revenue by governments at all levels of the Nigerian economy. The political economy of revenue allocation in Nigeria does not prioritize tax efforts. It is, instead based on such factors as equality of states (40 percent), population (30 percent), land mass and terrain (10 percent), social development needs (10 percent) and internal revenue efforts (10 percent). The approach, discourages a proactive revenue drive, particularly for internally generated revenue, makes all government tiers heavily reliant on unstable oil revenues which are affected by the volatility of the international oil markets. Apart from the national syndrome of 'cake sharing', the instability and volatility of oil revenue should have created an opportunity for improved tax efforts within the provisions on taxation ratified in the 1999 Constitution. Although some state governments have initiated measures to enhance their tax generating attempts, the outcome has not reflected any level of serious effort.³¹

Low tax compliance

This is another major challenge. A recurring problem with the personal income tax in Nigeria is the low compliance of employers to register their employees and to remit such taxes to relevant tax authorities. To address this, in 2002 the government amended the 1993 Personal Income Tax Act to make non-compliant employers liable to penalties up to N25, 000 as well as liable for the payment of all tax arrears. Employers failing to keep proper records would also face a penalty of N5, 000. A fine this small tends to encourage

³¹ Abubakar Yusuf Mamud 'Tax policy in Nigeria' see <http://www.buzzle.com/articles/tax-policy-in-nigeria.html> <accessed on 3 October, 2010>

Low application of technology

In Nigeria, there is generally low application of technology in facilitating the processes of tax collection and administration. Nigeria lacks capacity to make proper assessment of the returns submitted by taxpayers, including costs and staffing, skills, pay scales, and other funding, and computer and information technology infrastructure.

Conclusion and way forward

This paper has discussed various issues on the major roles played by the Nigerian Constitution regarding enforcement and development of Nigerian Tax Laws. It has also explained the concept of sustainable development in the context of revenue generation which is the ability of the present generation to meet their needs without negatively impacting the ability of future generations to meet their own needs. The paper also discusses how taxation facilitates development; as the overall focus of taxation has always been to provide resources for the development of the economy and improve the wellbeing of citizens from whom these taxes are collected. The challenges were also looked into and the following way forward are suggested:

- There should be continuing reforms in tax legislation including the Constitution, to improve efficiency, clarity and functionality of tax laws.
- Continuing modernization of tax administration: this involves automation, introduction of electronic processes and tailor-made projects to address specified areas of the tax system.
- All efforts should be made to support tax authorities from the highest to the lowest levels of Government and also from a critical mass of the citizenry.

Nigerian tax system and therefore carry out their constitutional and civic roles by paying the right taxes as their contribution to national development and growth.

This in essence is the path to socio-economic well-being which if followed with sincerity and passion will enable us look forward to the future with hope.