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Insights into onshore – offshore dichotomy, by Obong Victor Attah

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BEFORE the advent of the 1999 constitution, the principle of derivation was subjected to severe and whimsical gerrymandering by the various Presidents and Heads of State that had ruled Nigeria. This was due to the fact that, though the principle had been acknowledged and accepted there was no governing formula. Up till 1970, derivation stood at fifty percent. Decree No.113 of 1970, put forward by the late sage Chief Obafemi Awolowo and promulgated by General Yakubu Gowon (Rtd) reduced it to 45 per cent and at the same time appropriated the entire offshore oil revenue to the federal government.

That was the sad beginning of the onshore-offshore dichotomy. But it was an emergency war time effort to secure enough money with which to prosecute the war by the Federal Government and to reconstruct Nigeria. The minority people of the oil producing states were persuaded to make this sacrifice in the interest of the unity and development of this country. It was expected that this arrangement would end with Gowon's Reconstruction Programme.

Instead, in 1977, General Olusegun Obasanjo (rtd) as the Head of State took another 20 per cent to the centre, thus reducing the allocation to derivation to 25 per cent. At the same time he held on to the entire offshore production revenue thus maintaining the onshoreoffshore dichotomy. In 1981, even in an elected political regime which was expected to be democratic, Alhaji Shehu Shagari removed yet another 20 per cent, thus reducing derivation on onshore oil to five per cent. In 1984, General Mohammed Buhari (rtd) further removed 3.5 per cent thus reducing it to 1.5 per cent while still holding on to the offshore revenue.

It was only General Ibrahim Babangida (rtd), who was not called Maradona for nothing that did something unique and interesting. While he reduced derivation to one per cent, he introduced an ameliorating fund called OMPADEC at three per cent for the development of the oil region. This effectively raised the total due to derivation to four per cent. President Babangida's four per cent applied to the entire revenue from oil – both off and onshore. This de facto abolished the onshore-offshore dichotomy and marked the beginning of the restoration of justice and fair play to the suffering people of the Niger Delta region.

Onshore-offshore dichotomy

On realizing that the 1979 constitution and the subsequent Allocation of Revenue Act (Cap16) had failed to specifically address the vexed issue of onshore-offshore dichotomy, President Babangida proceeded! by Decree 106 of 1992 to amend the Act. The amendment states: “an amount equivalent to one per cent of the Federation Account derived from mineral revenue shall be shared among the mineral producing states based on the amount of mineral produced from each state and in the application of this provision, the Dichotomy of Onshore-Offshore oil producing and mineral oil and non-mineral oil revenue is hereby abolished.”

The two dichotomies: onshore and offshore production; oil and non oil resources were abrogated by this decree.

There were, or possibly still are, those who wanted to claim that this decree was never signed or gazetted and, therefore, should not apply. That is the extent of our mischief making and divisiveness. There is no denying the fact that all these shenanigans gave rise to the militancy in the Niger Delta. It cannot also be easily forgotten that the issue of a derivation formula was one of the sticky points to be resolved at the constitutional conference called by the late Head of State, General Sani Abacha, in 1994-95. At that conference, the Committee on Revenue Allocation put forward a resolution which was keenly debated, amended, and subsequently unanimously affirmed by the entire assembly.

This resolution provided a formula for the administration of the derivation principle and contained three very significant embodiments. The first is that allocation to derivation shall stand at a minimum of 13 per cent. The second is that the dichotomy between onshore and offshore exploration shall not be taken into account for the purpose of revenue allocation. The third is that the boundaries of littoral states were clearly defined as extending to Nigeria’s exclusive economic zone which at the time stood at two hundred nautical miles.

The 1999 constitution which we operate today has its roots in the findings of that conference. On the issue of public revenue, the constitution has this to say: “The President upon the receipt of advice from the Revenue Mobilization and Fiscal Commission, shall table before the National Assembly proposals for 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 principles of derivation shall be constantly reflected in any approved formula as being not less than thirteen percent of the revenue accruing to the Federation Account directly from any natural resources.”

We all know that the revenue from oil was the issue as the derived revenues from our palm oil and coal from the east, cocoa from the west and groundnut pyramids from the north had long since paled into insignificance. Tin from the plateau had since been exhausted and we had never been serious about our other solid minerals that abound in the north or the tar sands in the west. I cannot, therefore, agree with those who now feel that, in considering this formula, a distinction should be drawn between natural occurring resources such as oil and those produced through human labour such as groundnuts or cocoa. perhaps we need to be reminded that when derivation

stood at 50 per cent in the sixties, it included revenue from oil. So what has changed other than the price of crude oil? Is this recent outcry, therefore, just another exhibition of our limitless capacity for capriciousness?

Today Obasanjo is being condemned for adopting a political solution rather than abiding by the constitution where the payment of derivation is concerned. Those people who are doing so forget that when Obasanjo took office in 1999, in total and flagrant disregard for the constitution, he was allocating only one percent of our public revenue for derivation. His one per cent payment, we should note, included the entire revenue from oil – both off and onshore.

This went on for more than a year. When finally he was pressured into allocating the 13 percent that the constitution stipulates, he in a manner considered quite malicious reintroduced the diabolical dichotomy of off and on shore that had long since been laid to rest and which is not in our constitution.

The time to have blamed Obasanjo was when he was indulging in all these unconstitutional manipulations and not when he finally agreed to adopt a political solution. In fact his resort to the so called political solution was no more than a feeble attempt to go back to the dictates of the constitution of this country. Those who now want it otherwise should look carefully again at our constitution.

In defining the Federal Republic of Nigeria, the constitution clearly states that there shall be thirty six states which are clearly named and a Federal Capital Territory. No more, no less. What this means is that any territory, be it land or body of water which does not belong to one or the other of these states or the FCT cannot be considered as part of Nigeria.

Cardinal points of agreement

It is for the simple reason that the bodies of water adjoining the littoral states, including Lake Chad, belong in the first instance to those adjoining states, that they can be considered as Nigerian territory. This was one of the cardinal points of agreement at the constitutional conference of 1994-95. ‘

It should also be remembered that dichotomy was not always there. It was introduced as an emergency war time measure that was supposed to have a short terminal date. Unfortunately it dragged on till Babangida’s Decree 106 of 1992. Its total and final abrogation came at the constitutional conference of 1994-95. It is most fallacious, therefore, to try to “blame” the National Assembly as some people want to do, for doing away with this ignominy. What the National Assembly did, quite commendably, was to stand against the decision of a president whose unilateral action in going against the constitution by his reintroduction of the onshore-offshore dichotomy was considered unacceptable in a democracy.

Those who today are bringing up the issue of dichotomy should not forget that we can be as divisive as we wish in this country but the international community does not have to go along with us. The international community will not recognize two boundaries for Nigeria – the one given by the littoral states at the low water mark and the other by our Exclusive Economic Zone. This is because, as has been stated “there can be no boundary dispute between federating units

and the federation because it is the aggregate boundaries of the federating units that define the boundary of the federation.”

I raised this issue once before. I was ignored and we lost Bakassi. Recently, though quite belatedly, we wanted to claim it back. Bakassi as an island sits beyond the low water mark of Cross River State. Since we now want to say that there is something called Nigeria’s territorial waters that belong commonly to all of Nigeria, we must ask what would have happened if we got back Bakassi – would it have belonged to Cross River State or commonly to all of Nigeria? How would Bakassi belong to Cross River State and yet the intervening oil wells between the state’s low water mark and the island would belong commonly to all of Nigeria? How sad that in this country virtue cannot live out of the teeth of emulation!

Any governor who wants to say that he cannot develop his state because of non dichotomized payment of 13 percent derivation to the oil producing states is merely confessing that he is unfit to be a governor. In those evil days of Obasanjo’s dichotomy, I was given a mere N600m (six hundred million naira) every month with which to run and develop Akwa Ibom State which was classified as non oil producing. This was considered the most wicked and tyrannical manipulation of the constitution and it went on for more than a year until the National Assembly passed the law that corrected it. Twenty governors – the nineteen northern governors and one other from the west challenged that law at the Supreme Court and lost. What more; why not let sleeping dogs lie!

Despite that, I was able to build an airport with a maintenance hangar and the best runway in the country; I built an Independent Power Plant (IPP) of 191 megawatt capacity; I built the Le-Meridien Hotel with a marina and a golf course that today is the tourists’ delight and the place of choice for conferences, retreats and business meetings; I built housing estates, hospitals, schools; I built roads; I gave the people pipe borne water and rural electrification.

I started a University of Technology and an Information and Communication Technology (ICT) Park with a major incubation centre; I initiated the design for a deep sea port at Ibaka apart from establishing new, and rehabilitating a number of moribund industries. In the process I took Akwa Ibom State into Nigeria, and projected it positively to the world. I set enviable standards of development and above all I made Akwa Ibom State into a peace haven in the turbulent Niger Delta.

I can think of a number of things that are responsible for today’s poverty and lack of development but the payment of 13 percent derivation without onshore- offshore dichotomy is not one of them. One obvious reason is the extravagance and squanderment in government.

At independence the entire north, for instance, was governed by only one parliamentary type government. Today it is governed by 19 presidential style governments any one of which is phenomenally more expensive than the one that used to govern the entire region. A governor can have as many as one thousand aides in addition to a motley crowd of commissioners and special advisers. The story is no different at the federal level where a multiplicity of commissions, parastatals, committees and more committees are competing with one another for the work of the ministries. If we spend so much on administration how can we expect anything to be left for

development particularly, as on top of this, every aspect of government is today being run on television and the pages of newspapers. At an enormous cost, government now at every level, is run by advertising and not by performance.

If there is a need to look at derivation at all at this stage, it would be to see how the percentage can be increased for a very good reason. We have been told that the oil will last for only thirty more years. It has also been established that if we can stop further pollution, we will need thirty years from now to clean up the pollution that has already occurred in the Niger Delta.

I am not advocating an increase in derivation to be handed over to the governors some of whom, quite sadly, have not demonstrated the capability and integrity to properly utilize these funds. What I am advocating is an immediate need to garner funds for the cleanup of the Niger Delta otherwise, thirty years from now, we will have no land to farm on and no water for fishing and no oil. The cry now should be for an increase in the derivation percentage rather than the awakening of the foreboding ghost of onshore-offshore dichotomy at a time when there are so many more worrisome issues to engage our attention.

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