

LOCAL GOVERNMENT AUTONOMY IN NIGERIA: POLITICS AND CHALLENGES OF THE 1999 CONSTITUTION

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ABSTRACT

This paper undertook a historical overview of the development of the local government system in Nigeria, especially from 1950, when Nigeria became a federal unit (that is North, West and East). It was discovered that before 1976 when a unified local government system was adopted throughout the country, each of the federating unit, later state, operated the type of local government system that was unique to their political needs, but the advent of military regime with its centralised form of government affected this former arrangement. But, with the re-emergence of civilian regime in 1979, the former arrangement was adopted. Thus, the 1979, 1989 and 1999 Constitutions recognised the local government as a third tier of government, subject to the control of State governments. The abuse of these provisions in the Constitutions, especially by the State government, has brought to the fore-front the question of local government autonomy. Therefore, the only option is a review of the Constitution. Provisions should be put in place to check the loopholes that give room for such abuses by the State governments.

Keywords: Autonomy, decentralisation, devolution, federal systems, local government, rural development.

INTRODUCTION

Globally, various strategies and approaches have been adopted or used by government for the purpose of good governance, and in their efforts at distributing the state resources to reach the people at the grassroots. However, there has not been congruence or general agreement on which strategy is the best, especially in the administration of the rural areas.

Decentralisation constitutes the basic and principle basis for the establishment of Local government. A renowned International scholar of Local Government, Manhood as quoted in Dalhatu (2006) that "too much concentration of political and economic power at one level would ultimately and inevitably lead to what he referred to as managerial constipation". According to him, the basis of Local government is inextricably woven around the principle of decentralization. Local government is the product of decentralised administration. He further defined decentralisation as:

an arrangement by which the management of the public affairs of a country is shared by the central/ state/province and local government in a manner that the Local government is given reasonable scope to raise funds and to use its resources to provide a range of socio-economic services and establish programmes to enhance the welfare of those resident in its area of authority.

Politically, decentralisation involves the transfer of authority on a geographical basis and is inform of de-concentration or devolution. Decentralisation by devolution is preferred in most nations - state in order to promote rapid development of the country, this manifests itself in the establishment of local government. Most nation-states avoid centralisation because it inhibits the active

political participation of the citizens in the running of their own affairs, and could be by implementation; results in a situation whereby despotism is extolled (Toyin In Omale, 2005). This precisely explains why most countries of the world prefer to decentralise their administration by devolution.

It could be argued that centralisation of the government though may appear to strengthen its power and grip over the people effectively; it may as well weaken the ability to use this power and also completely erode the basis of its legitimacy. The power at the centre is already over-burdened by so many problems of localities. Hardly could any political issue, irrespective of its frivolities, be resolved without reference to the power at the centre. Unnecessary meddling in or handling of these problems of local concerns by the national government may prevent it from dealing adequately with these problems. As such, it is imperative for an appropriate mechanism for dispersal and conservation of political power, (Dalhatu, 2006).

The above assertion brought to the fore-front the reason for decentralisation and on this basis, the justification for the existence of local government. As asserted by Orewa and Adewumi (1992), the confusion had been on the form of decentralisation in which the local government system in Nigeria was based. Is it decentralisation by de-concentration or decentralisation by devolution? This issue is tenuous when it comes to the issue of local government autonomy in Nigeria. Therefore, this paper examines the issue of Local government autonomy in Nigeria from a historical perspective. This is with a view to understanding the intricacies of the fundamental problem of local government autonomy in Nigeria. The paper will also examine some of the inherent factors inhibiting local government autonomy in Nigeria.

THE HISTORY OF LOCAL GOVERNMENT DEVELOPMENT IN NIGERIA

Local Government is literarily seen as the government at the local level. Some scholars (Olowu 1988, Adeyeye, 2000) have distinguished local government depending on the political arrangement of the nation, i.e. unitary or federal system. Adeyeye (2000) defines local government in the unitary state as "non-sovereign community possessing the legal right but which are essentially administrative agents of the central government". On the other hand, the United Nations Office for Public Administration sees Local Government as:

A political subdivision of a nation (in a federal system) state, which is constituted by law and has substantial control of local affairs including the powers to impose taxes or to exact labour for prescribed purposes. The governing body of such an entity is elected.

Similarly, the Guideline for Local Government Reform (FGN, 1976) defines local government as:

Government at local level exercised through representative councils established by law to exercise specific powers defined areas. These powers should give the council substantial control over local affairs as well as the staff and institutional and financial power to initiate and direct the provision of services and to determine and implement projects so as to complement the activities of the state and federal government in their areas, and to ensure, through devolution of functions to these councils and through the active participation of the people and their traditional institutes , that local initiative and responses to local head and conditions are maximised.

The implications of the above definitions are in four dimensions, these include:

1. Local government must be a legal entity distinct from the state and federal government.
2. Local government must be administered by democratically elected officials.
3. Local government must have specific powers to perform a range of functions assigned it by law.
4. Local government must enjoy substantial autonomy to perform array of functions, plan, formulate and execute its own policies, programmes and projects, and its own rules and regulations as deemed for its local needs. This autonomy includes power to control its finance, recruit and discipline its staff.

Based on these definitions, and their implications, could it be said that the local government system in Nigerian is autonomous? This paper is aimed at addressing this fundamental question.

The history of local government system in Nigeria could be traced back to the pre-colonial period when powerful empires and kingdoms existed in Nigeria, such as; Oyo Empire, Borno Empire, Sokoto Empire, Jukun Kingdom, Nupe Kingdom, and Igala Kingdoms, among others. These empires and kingdoms had other smaller districts, wards, towns and villages which were subjected to them. The subordinate governments operated their own unique administration suitable for their cultural and religious needs and aspirations. The bulk of the administrative activities of these kingdoms and empires took place at these levels. This form of administration could be referred to as Local government.

The advent of British colonial administration in Nigeria brought about a change in local government administration in which the method of leadership changed from the traditional to the British colonial government. The colonial administration of local

government that was established was based on Indirect Rule system. This required that administration at the local level should be carried out through the existing traditional rulers and institutions. In the areas where there were no existing traditional rulers, and/or institutions, like in the South East, new ones were created. This led to the establishment of Native Authority in its most rudimental forms. The Native Authority Ordinance promulgated in 1910 which gave impetus to the system of indirect rule and recognised the traditional rulers as Sole Authority. The main function of the traditional ruler was to maintain law and order.

The Indirect rule system through the traditional rulers, especially the recognition of traditional rulers as Sole Authority met with a strong resistance by the people in the southern part of Nigeria. In the South-west where there were existing traditional institutions, the traditional rulers were not recognised as absolute rulers. In the South East, there were no existing traditional institutions. The traditional system in the East was more of republican-consensus.

In the Northern part of the country, especially in the Muslim dominated areas, the Indirect Rule system was highly accepted due to their existing traditional system which recognised the monarch (Emir) as the absolute Sole Authority. These resistance and the various riots and other political disturbances that followed, necessitated the various reforms in the 1930s and the 1940s which culminated in the establishment of Chief-in-Council in place of Sole Native Authority. The adoption of a Federal System of government in 1950 marked another stage of Local government development in Nigeria. The composition of the country into three regions impacted on the Local government system. Each region decided to adopt its own type or form of local government system. The regional systems of local government, until the collapse of the first republic in 1966, so prevailed with various refinements.

The Military takeover of government according to Gboyega (2001) has severe repercussion for local government system which was radically changed to accommodate not only the hierarchical military command structure, but also to redress the abuses that the system had been subjected to. The restructuring was also meant to meet the aspirations of the people for greater political participation and empowerment in local government area. Despite the imposition of military rule and command structure, the regions and their successor, states, still retained control over local government policy-making and were thus able to carry out reforms that were deemed appropriate to their circumstances. The period of military rule from 1966 to 1975, therefore witnessed extensive experimentation with different theories and patterns of local government with quite mixed results (Gboyega, 2001).

The 1976 Local Government Reform marked a turning point in the historical development of local government administration in Nigeria. As asserted by (Ugwu, 2001), the reform "form a watershed in the evolution of local government development and Administration in Nigeria". The 1976 Reform marked the end of sound experiment or model and gave way to a common national local government system in Nigeria.

The major thrust of the reform in the word of Orewa and Adewumi (1983) "is to entrust political responsibility to where it is most crucial and beneficial, that is to the people". It also aimed at social and development of and the effective delivery of the respective local population scattered all over the country". Unlike previous reforms which were highly restricted in scope and range, the 1976 reform followed extensive consultations at all the levels of the federating units and among other stakeholders and experts. The reform also conceptualised local government as the third tier of government operating with a common institutional framework with defined functions and responsibilities. As a third tier of

government, local government gets its statutory share of allocation direct from the Federation account and it is empowered to exercise control over its spending. In addition, the reform provided for a democratically elected local government councils. All the provisions of the 1976 Reform were entrenched in the 1979 Constitution which anchored in the Second Republic. However, the 1976 Reform invariably gave the Federal Government more domineering role. As Gboyega (2001) rightly observes; "the consequences of Federal intervention and imposition of a common system of local government have been mixed ---- from a benign role that clearly retained State dominance of Local government policy-making, the federal role has gradually widened to the point where the Federal Government can initiate local government Policy reform".

The Second Republic was a turbulent period in the history of local government administration. It was a period in which to put to practice the provision of the 1976 Local Government Reform as contained in the 1979 Constitution. It was a testing period in which the State and the Federal Government contested the control of Local Government Policy with each other. Attempts by the State to re-establish their primacy in local government policy-making not only created conflict with the Federal Government, but also weakened the power of the local government.

The States, especially, abused some provisions of the 1979 Constitution to suit their selfish desires. State governments neglected or voided aspects of the 1976 Reforms that they were displeased with and distorted those that were merely inconvenient. For instance, throughout the Second Republic (1979-1983), no election was held into the Local Government Councils, only Sole Administrators were appointed. This was at variance with the 1976 Reforms and 1979 Constitution, especially (Section 7) which provides for a democratic elected Local Government Council

throughout the federation. Such behaviour painted the State as villains and provoked demands for greater federal role in local government Policy-making (Gboyega, 2001).

The re-emergence of the military into the political scene brought about a shift of Local government control from the State to the Federal government. The Babangida administration (1984-1993) initiated some reforms aimed at ensuring local government autonomy. Some of the reforms included the abolition of the Ministry of Local Government, establishment of executive and legislative arms in Local Councils, and direct allocation to Local government without passing through the State government. The statutory allocation of the Local government was also increased from 15 percent to 20 percent in 1992.

There was that agreement among scholars, (Gboyega, 2001, Igbuzor, 2003) that the reforms of this period are aimed at a radical transformation of the status of local government in a federal system. Thus, the Federal government's scheme of decentralisation was deliberately and consciously focused in transferring greater powers and resources to local governments rather than to state governments. Through the reforms at this period, it could be said that a greater measure of devolution was made at the expense of the state. This however, provoked negative reactions from the state and suspicion about federal motives in promoting the reforms. The Abacha Administration (1993-1996) however, revised some of the reforms.

The exit of the military and the enthronement of the democratic government in 1999 brought to the fore, again, the problem of local government autonomy. The provisions regarding local government administration in the 1999 Constitution created a lot of confusion. The 1999 constitution by its provisions in section 7 and 8 recognise the local government as a third tier of government and also guarantee it, but gives the state the autonomy to lord over the local government.

Section 7 reads jointly with Section 8 provides that there shall be: The system of local government by democratically elected councils (which) is by this Constitution guaranteed and accordingly, the government of every State shall, subject to section 8 of this Constitution.... ensure their existence under a law which provides for the establishment; structure, composition, finance and functions of such councils.

The implication of these provisions is that local government cannot exercise the functions assigned to it in section 1 schedule 4 of the Constitution until the State House of Assembly had passed a law. The same Fourth Schedule of the Constitution also provides for "the functions of the Local government Council to also include participation of such Council in government of a state as in respect of the following matters, education, agricultural materials resources, healthcare and any other function assigned to it by the State House of Assembly.

Another area of confusion is in terms of electing the Local government Council and their tenure. 2nd section 7(6) of the 1999 Constitution provides for a democratically elected Local government Council. While the Constitution provides for four year tenure for Federal and State political office holders, it was silent on the tenure of the Local government political office holders. The Constitution in the concurrent legislative list gives the National Assembly the power to make laws "with respect to the registration of voters and the procedures regulating election to a Local Government Council. The same Constitution gave the powers to the State House of Assembly to make "laws with respect of election into a Local Government Council.

For instance, in preparation for the Fourth Republic in 1999, local government elections were held on 5th December, 1998. The elected officers however did not assume office until six months later in May, 1999. The electoral law under which the local

government officials were elected (Basic Constitutional and transitional provisions Decree No. 36 of 1998) provides for tenure of three years. The local government officials later went to the Supreme Court to ask for the increase of the tenure to four years. In collaboration with National Assembly, the Supreme Court however ruled that the National Assembly did not have the power to increase or alter the tenure of elected officers of local government.

At the expiration of the three years which supposed to end in May, 2002, the State Governments appointed Caretaker Committees for all the Local Government Councils in their states to serve until another date of election was agreed upon. Subsequently, the election did not take place as and when due as it was postponed twice due to the tussle between the State Independent Electoral Commission (SIEC) and the Independent Electoral Commission.

Although SIEC was empowered by the Constitution to conduct local government election, the Independent National Electoral Commission (INEC) has the responsibility of updating the voters register and making same available to SEIC. But when SEIC fixed May, 18, 2002 for election into the Local government Councils, INEC failed to produce and make voters register available to them. Thus, the election had to be postponed. Another date was fixed for December, 2002, but due to the registration of more political parties, the election was postponed to 21, June, 2003. A few days to the date of election, 17 June, 2003, the forum of local government met and pushed for Constitution amendment to empower State Governors to appoint Council Chairmen and Councillors.

A day after, the Governors met with the President at the Council of State meeting where a decision was reached to set up a Technical Committee on the review of the structure of the Local

government Councils in Nigeria. The Committee was chaired by the late Etsu Nupe, Alhaji Umaru Sanda Ndayako. The report was submitted in 2006 however, election into the Local government Council however take place in 2007. It could be adduced that the controversy over election into local government was created by the 1999 Constitution. The confusion created by the 1999 Constitution became a subject of controversy between the Federal and State governments on one hand, and the National Assembly and State Houses of Assemblies on the other.

Another dimension of the confusion created by the 1999 Constitution which affects Local government autonomy was the provision that empowers the State to determine and create new Local Government Areas. Section 8 (13) provides the modalities for the creation of new Local government Areas and indeed vests the power to do so on various State Houses of Assembly. Section 8(6) of the Constitution however empowers the members of the National Assembly to ratify them. This provision also brought about the tussle for the control of local government administration between the States and the Federal government.

Many States (for example, Kogi, Lagos, Niger, and Oyo etc) created more Local Government Areas in line with the modalities stipulated in the constitution, but the Federal Government refused to recognise them. A state like Lagos, decided to recognise and fund the new Local Government Areas it created. This generated into a rift between Lagos State and the Federal government in which the Federal Government stopped the statutory allocations for the State.

Lagos State went to the Supreme Court to demand for justice. The Supreme Court ruled that "States have the power to create new Local Government Areas as far as the modalities for its creation as stipulated in the Constitution are followed". It also ruled that the Lagos State Local government statutory allocations being withheld

by the Federal Government was illegal and unconstitutional. Despite the ruling, it took another 12 months for the Federal Government to release the withheld allocations.

Nwabueze (1983) in Ugwu (2003), had observed that the Constitutional power to establish local government, define its structure, composition and functions, belong to the State governments. To them, as far as it is so, the local government is a mere State agency or a creation of the State government. It would therefore be erroneous to see it as an independent third tier of government. As such, the issue of autonomy of local government becomes a myth and not a reality.

Another area of Local government autonomy has to do with the area of finance. The Constitution empowers the State to scrutinise and approve Local government budgets, and expenditure through the State House of Assembly, States here exercise arbitrary and undue control over Local government finance through the establishment of the State Local government Joint Account. The issue of State Local government Joint Account has been a thorny issue in Local government State relationship in the Fourth Republic. This situation also brought to the fore the question of Local government autonomy. The experience with many Local government areas was that their states starve them of the statutory grant thus denying them of rendering essential services as required.

As asserted by Dalhatu (2006) "the issue of autonomy has to do with the Local government, beyond mere constitutional provision that would be organised as the third tier of government, with power to regulate, to spend and powers to provide services". But experience and empirical evidences have shown that financial autonomy of local government is non-existent in Nigeria. The former president, Olusegun Obasanjo in a meeting he had with the 774 Local governments Council Chairmen in Nigeria, broadcasted live on Radio and NTA, acknowledged the thwarting of local

government revenue by some State governments. He promised that the then proposed Technical Committee will look into the matter (Radio Nigeria, 2004). Through the Local Government State Joint Account, some States apart from arbitrary deduction also forced the local government to embark on some ridiculous projects that are not in congruence with the needs of the local people under the pretext of ensuring uniformity in development.

CONCLUSION AND RECOMMENDATIONS

In conclusion, the provisions in the Constitution that dictate the power and financial relationship between the various tiers of government, especially the State and the local government are deliberate. They are made to serve as checks and balances; and ensure transparency and accountability, among others. But the way some states go about it, is rather more of punitive rather than corrective measure. For instance, Lagos State was one of the States in which these provisions had not been arbitrarily used by the state government. Lagos State and its Local Government Councils work like partners in progress rather than servant/master relationship.

It is therefore obvious, that, for any meaningful development to take place at the local level, the States need to recognise the Local government as partners in progress. That is partners in enhancing sustainable rural development through the provision of essential services to improve the Standard of living of the rural populace. On local government election, the election into Local government Council should be held a week before State Governors election. If possible, election into State House of Assembly and Local Government Council should be held the same day.

The tenure of the Local government Chairmen/Councillor should be the same with other political office holders in the State and Federal level. On Local government creation, although the process of Local government creation has been liberalised as 2/3

of the population of intended area or community must agree to the creation by consensus. The intended local government should be made to rely on its internally generated revenue for a period of four years as a condition for its creation. Thus, any intended local government Council that is able to sustain itself without any support from the Federation Account for the period of four years can be allowed. This condition should also apply to State creation.

This paper also suggested that 70% of the statutory allocation to the Local government should be the responsibility of the State, and 30% from the Federal government. This will reduce the quest by the State to want to 'commando' the local government statutory allocation or exert excessive control on it. It would also check the quest for creation of more Local Government Areas by the State government. If possible, the statutory allocation to Local government should be determined by certain percentage of what was internally generated in the area. The allocations could as well be tier to programmes and projects to be executed by the Local government Council.

The role of the Federal Government should be that of supervision and monitoring of local government projects and programmes in order to maintain standard. It should also be that of ensuring prudence and accountability, and effective Service delivery. With these in place, Local government autonomy will be guaranteed and it will be able to effectively play its role as a catalyst for Sustainable Rural Development.

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