Constitutional Provisions and Challenges to Local Government Administration in Nigeria

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CONSTITUTIONAL PROVISIONS AND CHALLENGES TO LOCAL GOVERNMENT ADMINISTRATION IN NIGERIA

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Abstract

The primary focus of this paper is to identify and explain the various flash points and problems of constitutional provisions in Nigeria; with emphasis on local Government administration as enshrined in section 7 (1 and 2) of 1999 constitution which restored to the States, the power to create and control local Governments among others. The paper regrets to note that the gains made in local Governments after 1976 Local Government Reforms have been depreciating. This is particularly true since the inception of 1999 constitution of Federal Republic of Nigeria and the deliberate actions of the State Governments, local Government appear to be weak and sickly, and treated merely as state government appendages and extensions rather than a tier of Government that can effectively play its part in local administration and rural development. It is hoped that with clear identification of the problem(s), and solution(s) to be proffered will be adopted by policy makers to make and enhance local Government service delivery to the rural masses.

Introduction

Within the Nigerian political system local Government have always taken a central stage in the general scheme of things. It has undergone some remarkable changes overtime depending on the varied determining factors such as regime types, leadership interest in the system and provision of the enabling laws. As a result of these factors, local Governments in Nigeria has witnessed vagaries of change in terms of trends, management style and structure that led to the throes of deep crises and problems of service delivery.

However, the major concern of every reform in governance has always been on the need to make local government system more focused, more alert and more pragmatic in the discharge of its constitutional responsibilities as a tier of government. This is understandable since the exigencies of Nigerian political process and its belief – value in a Federal form of government which imposed on her the inevitability of local government authorities as instrument of service delivery to the masses of the people. Beyond the dictate and its universal necessity of local governments, the necessity of its existence is already established. As Harold Laski has aptly put it:

We can not realize the full benefit of democratic government unless we begin by the admission that all problems, and that the results of problem not central in their incidence require decision at the place, and by the persons, where and by whom the incidence is most deeply felt (Laski, 1980:411).

In considering the nature of the problems and crises of local government, many factors which are endemic and demanding very serious surgical operation have served and are still serving as impediments to the attainment of the good-value of service delivery in the local governments in Nigeria. It is against this background that the focus of the paper is to identify and explain the various flash points and problems of Constitutional provision in Nigeria; with emphasis on Local Government Area as enshrined in section 7 (1 & 2) of 1999 constitution that serves and still serve as impediments to service delivery in Nigeria local Government system among others.

This paper is in five parts starting with introduction, part two conceptualized local government. Brief salient historical notes are in part three, while part four discussed the constitutional provisions and problems of service delivery and part five concludes the paper and proffered solutions.
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Conceptualizing Local Government

As there are authors and writers in the area of local government so are there as many definitions of the term. They have in the process highlighted the need for the infinite existence of this tier of government within the anatomy of all political systems the World over. For this purpose, we will attempt to define local government in terms of looking at it as a process. In this case, local government can be seen or regarded as the management by the people within a locality of their own affairs. In this sense the emphasis is on management, seen as a process or human activities, which involve the combination of human efforts with materials, money, etc for the purpose of achieving a goal or a number of goals. This process of management is located in a particular locality. The people resident in a given area come together and organize themselves to harness their resources with a view to enhancing the welfare of the people of that locality. The goal of the management process, therefore, is the enhancement of the welfare of the people.

Local government can be regarded as a grass roots governmental structure and it should be noted, at this juncture, that it is about the most common meaning attached to the concept. In this sense, local government can be broadly defined as a political administrative structure for governing at the sub – state or sub – national level. To get a clearer understating of this definition, one must have in mind the concept of levels of government the organization of government in terms of the territorial distribution of the governmental powers and functions. For example, given the unitary type of government that exists in Britain, which specifies the distribution of governmental powers and functions territorially, local government in Britain is a political administrative structure at the sub – national level. There are just two levels of government there - the national or central government and the local government. The local government system is subordinate to the central government. In fact, the local councils under this unitary arrangement, as is also peculiar to other unitary States, owe their existence to the central government.

In Britain, however, local government is a very serious matter. Local councils in exercising functions allocated to them, exercise a reasonable degree of autonomy from the central government. There is absence of excessive control by central authorities though they operate on set down overall standards stipulated by the central government. For example, the Greater London Council is a big local government authority, which provides extensive services to inhabitants within its sphere of influence.

In Nigeria, the local government, therefore, is the most primary level of government. In Nigeria, local government constitutes the third – tier under the federal and state levels of government. Local government, therefore, remains a sub – state unit of governance, and under the presidential system of government, they (local government) are supposed to be significantly autonomous form both the federal and state governments.

It should be noted that not all political administrative structures at the local level can qualify to be called local government. The defining characteristics are that the element of government must exist. Local government is essentially a government structure; it involves the establishment or enthronement of government which in a democratic culture must be freely formed by the people. The government is the only invested organization endowed with the power to make laws and rules and enforce them over the inhabitants of that locality. The structure has political connotations and in the exercise of its allocated governmental powers, it posses absolute monopoly as there are no competitors.

These important explanations set local government apart from other structures, groups or local solidarity organizations, which may exist, in localities to cater for the primordial, local interests and aspirations of the people. Organizations like tribal unions, improvement societies, friendship circles, clubs, associations and others cannot and should not be regarded as local government.

Hence, local government is regarded in many countries as a competent unit of government that can assess the needs of the communities and expected to mobilize and harness local resources and ensure their effective utilization with the support of the state or central government.

Local government could thus, be defined as a group of relative local communities within an identified geographical expression involved in the management of their affairs in an organized fashion of self – government, having some roles, functions and powers devolved to them through statutory provisions and relative degree of autonomy (Manu, 1998:1). It could also be defined as that tier of
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government closest to the people, which are vested with certain power to exercise control over the affairs of people in its domain (Bello Oluani and Omar Maesoud, 1998:24).

Orewa (1991:24), in an effort to characterize local government and distinguish it from other fields of public administration at the grassroots level, detailed its features, forms, status within the political and administrative framework of a country as follows:

a local government is the level of government below the central government in the case of unitary state, or below the regional, provincial or state government in the case of federation, which is obliged to provide a range of services set out by law, to its communities and has legal authority to do this. It also has legal powers to enforce its executive and regulatory decisions on its citizens without resorting to social pressures to achieve this. Its area of authority and the basis for representation on its political leadership platform are defined by its instrument. It has its own staff and revenue.

The definition provided by the Federal Government of Nigeria under the guidelines for local Government reform 1976 deserves to be included here for its relative standard and comprehensiveness. According to it, local government is:
government at the local level exercised through representative councils established by law to exercise specific functions within defined areas. These powers should give the council substantial control over local affairs as well as the staff and institutional and financial powers to initiate and direct the provision of services and to determine and implement project so as to complement the activities of the state and federal governments in their areas (FRN, 1976:1).

Local government is the government at the grassroots level, which is meant to meet peculiar needs of the people. These are problems that are local in nature and such problems are better handled by local government. In view of this, Appadorai (1975:287), sees local government as government by popularly elected bodies charged with administrative and executive duties in matter concerning the inhabitants of a particular district or place.

Kolawale (1993:171), sees local government as a tier of government, which in physical term is closest to the citizenry and it is saddled with the responsibility of guaranteeing the political, social and economic development of its area and its people.

Agagu, in his seminal path – breaking article “local government published in Dipo Kolawale (Ed), Readings in Political Science (1997), identified five features of local government as:

i. It lacks full autonomy because it is the creation of central or state legislature.

ii. It has a corporate identity because it can sue and it can be sued.

iii. The inhabitant of the local territory participates in government directly or indirectly through their elected representatives.

iv. Local government has jurisdiction over people living within its boundary,

v. It possesses the authority and structure for achieving the purpose of its creation.

Eme Awa as cited in Ibodje (2000), provides another simple definition of local government. He defines local government as political authority for the purpose of dispersing or decentralizing political power. While Ola (1984), in his thought stimulating book, Local Government in Nigeria, adopted the United Nations Office for public administration definition of local government as political sub – division of a Nation (Federal System) which is constituted by law and has substantial power to control local affairs, including powers to impose taxes, exact labour for prescribed purposes. The governing body of such an entity is either elected or otherwise locally selected (appointed).

In concrete terms Agagu (1997:218). sees local government as government by popularly elected bodies charged with administrative and executive duties in matters concerning the inhabitants of a particular district or place. This explanation is not significantly different from the definitional construct by the United Nations and the White Paper on the 1976 local government Reforms in Nigeria (op.cit). But it can be broadly specified following Okoro (2003), as institutional expression of the governance system set up to cater for those needs and interests of the community closest to it.

In sum, we can say that local government is involved with bringing government nearer to the people of a particular locality. The necessary structure to be this about, which is political in nature must be put in place and be endowed with essential governmental powers. It must be distinct from other organizations or structures at the grassroots levels.

From the foregoing, it should be observed that bringing government nearer to the people involves actually locating governmental impact to the grassroots. One word that expresses this phenomenon is “decentralization”. Local Government is an attempt to decentralize government to the local level. It can be explained within the context of the broad – field of decentralization as a third tier of government in Nigeria.

Salient Historical Notes

Local government known as Native Administration during the colonial rule took so much control of the affairs that they relegated to the background the viability and influence of regional, provincial, and central colonial government. During the first republic, the regional governments then were very fervent in propagating their own idea and convictions about local government such that different systems of local government operated at various regions.

The post – civil war military rule brought in the 1976 local government reform that heralded the most notable epoch in the evolution of local government in Nigeria. The said reform introduced many new features; these include;

1. The adoption of a common (uniform) local government system nationally. This meant all local government had the same structure, sources of finance, function, personnel management system and similar relationship to traditional rulers. Even more significant, for the first time since the adoption of federalism in Nigeria, the federal government made a commitment to statutory transfer of part of the public funds of the federation to local governments. This was a remarkable positive measure for the first time in many respects. First, it was a block grant not tied to any specific objects of expenditure. So it was entirely in the discretion of each local government to decide how to spend it. Secondly, because it was mandatory, it was a reliable source of revenue. Thirdly, the states were also required to make similar fiscal transfers to support their local governments. These transfers from the federal and state governments were appropriated annually in the budgets until the second republic (Onah, 2004:5).

2. The recognition and elevation of local government to a distinct third tier of government.

3. The conferment of autonomy of local governments with specific prescription of exclusive (and concurrent) functions and internal revenue sources (FRN, 1976: 1 – 3, 54 – 53). Although the states were allowed to pass their individual edicts or make laws which ushers in the reform in their local government system, once it comes into effect they could not on their own change any part of the reform documents (Onah, 2004:5). The 1979 constitution which ushered in the second republic, translated key provision of the 1976 reform into a constitutional guarantee and mandate. For instance, section (1) of the constitution provided that the system of local government by democratically elected local government council is under this constitution guaranteed; accordingly, the government of every state shall ensure their existence under a law which provides for the establishment, structure, composition, finance, and functions of such council. This provision attempted somewhat to preserve the traditional constitutional subordination of government to the state rather than the federal government.

All sundry post 76 local government reform as well as the reform introduced by the Babangida regime were all codified into local government (Basic constitutional and transitional provisions) decree (No. 32 of 1989). Among many other matters, this decree prescribes the practice of full presidential system in its entire ramification in Nigeria local government (FRN, 1989). Considering these milestones, all successful creation of new local governments in Nigeria’s history
have been accomplished by different military regimes and considering that an attempted creation of new local governments during the second republic failed and was subsequently abrogated, hence local government since was not different from what the military left behind. Therefore, hardly would any informed scholar not agree with Nwosu (1989), that the local government system is easily the most prominent legacy the military has bequeathed the Nigeria:

Besides, the Abacha administration was transient in nature. In 1996 took its main action of creation of more local government. In October 1996, increased the number of local governments from 589 to 774 and states from 30 to 36. It also took the decision that all local governments should set aside 5% of their statutory allocation from federation account for the upkeep of traditional rulers (Onah, 2004:7).

At the threshold of the fourth republic, Nigeria has some other equally significant mindsets. These include among other; Nigerians are already accustomed to autonomous local governments focused on grassroots development with an opportunity for unfettered popular political participation. Furthermore, Nigerians were indoctrinated with the euphoria that the incoming fourth republic democracy would herald new dawn of the reign of constitutionality and rule of law that will soothe the instability, rapid regression and unsustainable development military regimes had inflicted on Nigeria. In this regard therefore, Nigerians are expectant of a more stable, more effective, and more efficient local government system that will address the dear needs of accelerated and sustainable grassroots development in the fourth republic.

In the light of the above, it has become imperative to examine how the local government system had fared based on the constitutional provisions of 1999 constitution of federal republic of Nigeria.

Constitutional Provisions and Problems of Services Delivery

A thorough examination of 1999 constitution of federal republic of Nigeria by any reasonable man as relating to local government matters as well as the accompanying remarks and indications of the contending paradigms apparently favoured by such provision provides enough prima – facie evidence to the effect that the said constitution prevaricates on and in fact oscillates between autonomous local governments and local administration. Accordingly in the final analysis, it does not clearly prescribe any contending paradigm. However, some very important provisions of the said constitution that serve and still serve as an impediment (problems) of service delivery in Nigeria local government system merits further examination.

No section of the 1999 constitution of federal republic of Nigeria conveys lack of vision and tact in constitution making / drafting than section 7 (1). All things being equal, the letters and spirit of this section imply that, subject only to section 8, the government of every state is constitutionally empowered to make law which provides for the establishment, structure, composition, finance and function of local government councils. The main error lies in the clause “subject to section 8 of this constitution”. By the former clause, a state is empowered to make laws to regulate local government within the state in all ramifications since the subject area of “establishment, structure, composition, finance and function” covers all aspects of the existence and operations of local government. Such laws made by the states would immediately come into direct conflict with provision already made by the constitution for local governments in the said subject areas, especially Section 7 (1) first stanza; 7(2), 7 (5); 162 57) and 229. Whereas the “clause Subject to the provision of this constitution” would prevent such conflicts.

For instance, state governments need not make any other law prescribing an undemocratic and unelected caretaker committee for her local governments when the first stanza, Section 7(1) of the constitution has already prescribed a “democratically elected council”. Yet the state governments woke up after one another to unconstitutional dissolved properly constituted council ahead of election slated in the 2002. Caretaker Committees of various designs were unilaterally put in place, despite there, were no provision of such organ in our constitution (Orluwene, 2006).

Between June, 2002 and March 2004, there was no election in the local governments; there was no Executive Chairman throughout the federation. Appointment of local government leadership was at the whims of the state governors (Onah, 2004). What is the cumulative effect of such development on the strength of local government is the question of service delivery? Again since
June 2007 till date, most state government have dissolved local government leadership and in their place unilaterally put in unconstitutional caretaker committees.

Unceasing vacillation and fundamental contradiction in paradigm shift in Nigeria Local Government affairs can be found in two Supreme Court judgments. On one hand, the Supreme Court of Nigeria nullified the National Assembly's elongation of tenure of Councils elected in 1999 save for Councils in the Federal Capital Territory (FCT). This nullification was based on the Supreme Court's position that the matter of elongation of tenure of council's in a state comes within the contemplation of Section 7(1) of the Constitution, which falls within the competence of the respective State House of Assembly. Of course, this Supreme Court judgement is widely known (Olugunde, 2004).

On the other hand, however, another Supreme Court judgement in suit No. SC/218/1999 had that all the function listed in the Fourth Schedule of the 1999 Constitution are 'exclusive' responsibilities of Councils including un-named sundry function and responsibilities "incidental" to the performance of the functions contained in the said fourth schedule. Accordingly, the judgement further held that state government or her privies lack the competence to interfere in the said "exclusive function" of Councils and that "the local government council cannot even if it wants to divest itself of those powers" exclusive to it (Adesanmi, 1999,18). Does this judgement not simply imply that state cannot legislate on the “function” of local governments? Whereas" function” is one of the subject area that Section 7(1) of the 1999 Constitution empowers states to legislate on?

A far more important implication of the overriding precedent set by the said Supreme Court judgement is that Nigeria local governments now have constitutionally and legally guaranteed “exclusive powers” like the Federal Government has in the exclusive legislative list. Whereas states have no exclusive power – being limited only to the concurrent legislative list. Does this not subtly imply a three tier federation where federal and local (1st & 3rd) tiers are more powerful than the state (2nd) tier? This is source of worry for state governments as well as state governments reason for encroachment into local government powers and functions thereby making local governments appear to be weak and sickly and treated merely as, state government appendages and extensions.

The combined implication of Section 3(2) and 3(6) is that the existing 774 local governments are expressly and rigidly delineated constitutionally though some other provisions 7(2a-b), 8(3a-c), 8(4a-b) allow for the creation of new local government and consequent boundary adjustment at the state level. Such state level creation of new local governments is subject to rigorous procedures warranting constitutional amendment 8(6), 8(5), 9(1) and 9(3). And more important, amending the constitution for purposes of new local government demand not only the usual 2/3 majority but a whooping 4/5 majority of both Houses of the National Assembly as well as 2/3 of the 36 State House of Assembly. Hence it is practically impossible for any state, in isolation, to achieve an authentic creation of new local governments. While states which fell short changed in the present imbalance may aspire for more local governments in an attempt to correct the perceived imbalance. Other states deemed to be favoured in the present imbalance may aspire to have even more. This would inevitably lead to chaos arising from wanton balkanization, fragmentation and proliferation of local governments. Such chaos would inevitably lead to freezing and abolition of purported newly created local governments, which is obviously a movement back to "ground zero". This partly explains the recent face-off between the federal government and some states governments especially Lagos state among others.

Another visionless and lack of tact in constitution drafting is conveyed in Section 162 (and its various sub-sections) of the 1999 Constitution. On one hand, Section 162(2) confers on local governments the status of equal parties to a three-tier federation and guarantees federal statutory allocation to local governments. Similarly Section 162(7) guarantees state statutory allocation to local governments. On the other hand, Section 162(5), 162(6) and 162(8) all together throw the spanner in the works by vitiating the notion of financial autonomy for local government. Moreso, when the National Assembly has not expressly prescribed the “terms” and “manner” of disbursing local government statutory allocation needlessly allocated to the states for the benefit of their local government councils” or the modalities of operation of the so-called State Joint Local Government Account (SJLGA).

Even if the National Assembly in due course prescribes the term and manner of disbursing federal statutory allocation to local governments in accordance with Section 162(5), this will still conflict with the power of State House of Assembly to prescribe terms and manner of distribution
among the local government councils of the state “the amount standing to the credit of local government councils of the state” in accordance with Section 162(8), which obviously does not distinguish between federal and state statutory allocations.

Furthermore, this constitutional provision is defeated since SJLGA has historical problem of facilitating state encroachment on the revenue of local government. This lapse necessitated its SJLGA abolition under the military reform of the mid-1980s of the Babangida’s administration because it posed the danger of undermining local revenue stability, rather than strengthening it, because it has facilitated numerous deductions at sources by the state from the funds accruing to local governments. This is clearly contrary to the perceived good intentions of the Constitution (Orluwene, 2007:115).

More importantly, the constitution provides for the establishment of other regulatory bodies like Local Government Service Commission (LGSC), and the Auditor-General of Local Government (AGLG). It empowers LGSC to employ, deploy, promote and discipline senior local government staff. This posed the problem of local governments’ ability to finally control its key staff, while the AGLG which was created to ensure effective post expenditure audit for local government account has the problem of weakness in terms of the number of qualified staff and resources of doing the job. Secondly, its report goes to the State House of Assembly and no provision is provided for downward accountability. Therefore, citizens have little opportunity to check the financial performance of their local governments.

The constitutional provision also created the political problem of delocalized local politics because of the electoral system by which local government councils are composed. The politics of the national political parties do not allow sufficient focus on local issues and candidates, so local election is fought on other issues than local. The effective de-localization of politics has meant that there is no effective means by which local residents can ensure responsiveness and responsibility of the representatives. Therefore, local government chairmen are not easily amenable to any local influence not of the local party or of the traditional ruler, let alone ordinary citizens.

The imposition of the uniform system of local government by the military in 1976 (by extension 1999 constitution) without due regard to historical, cultural, ethnic and religious differences and peculiarities (what has been called de-localization of the local government), loss of local legislative and fiscal competence to the federal and state governments, and the prominent roles of the federal government in local government affairs are a few of the anomalies, consequences of centralization, and reason for poor service delivery of the local government system in Nigeria (Orluwene, 2007:120).

In the view of the forgoing, it is evident that the 1999 constitution of the Federal Republic of Nigeria is ambiguous in its prescriptions of a system of local government in Nigeria. While some provisions of the constitution favours contending paradigm of local administration. This ambiguity is the root cause of problems of poor service delivery in Nigeria local government system.

Recommendations

Based on the brief review of the history of local government and provisions of 1999 constitution of federal republic of Nigeria, certain facts emerged that the 1999 constitution is ambiguous in its prescription of the paradigm of local government system. We therefore, adapt the suggestion earlier made in Orluwene (2006:26), to move the system forward.

The first line of charge in this regard is a comprehensive review of the constitution through a national conference. This will answer several other national questions including the character of the Nigerian state and whether, in this particular instance, we want local governments, who has power to create them and who funds them?

Secondly, the current leaders, the President, the Governors and the Legislators, all of whom are in custody of the symbol of authority to calm down and allow the local government system, being the third-tier of government to take shape, thrive and survive, in line with what is the desire of Nigerians that they be autonomous.

Thirdly, local government councils should receive their revenue allocation directly from the federal account. Therefore, the joint state/local governments (SJLGA) accounts should be abolished.

Fourthly, the tenure of local government council chairman and councilors should be synchronized with that of the first and second tiers. The responsibility for council election should be
assigned to the Independent National Electoral Commission (INEC) as it happened in the previous republics and to hold along with others during general elections.

Fifthly, the council chairman should also be chief security officers in their council areas, just as governors are in their respective states, in order to enhance their constitutionally guaranteed autonomy and paralleled status.

Finally, the swearing in of council chairman and councilors should be assigned to Judges and very Senior Magistrates, in place of the current practice where state governors do it, and use such occasions to issue self-serving directives to democratically elected representatives who got their mandates from the same electorate that voted the governors into office.

Conclusion

In conclusion, some sections of the constitution clearly favours autonomous local government system. Some other provisions created the ambiguity that is the root cause of the unending crises and problems of poor service delivery in the local government system, which by extension have threatened the survival of our nascent democracy and federalism, such that under the current dispensation, many state governments are trying to place severe restrictions on the autonomy of the local governments. This is not the spirit of section 7(1 and 2) of the constitution of the federal republic of Nigeria. Local governments deserve their autonomy; to earn it, state governments must relax the current suffocating controls maintained over the local governments. Otherwise the creative energies that the local governments can unleash for local development will remain stifled and the outcome will be the demise of the local government system.

References


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