

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Finding Solutions to Legal Constraints Affecting the Operation of Local Governments in Nigeria

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Abstract:

Local governments in Nigeria like in other Countries operating the system are regarded as the third-tier level of government after the Central and Regional/State levels. In Nigeria, the 1999 Constitution as amended appears to have made this provision in the relevant sections but the same instrument and the operators have made the effective operation of this level of government impossible, one may say. But effective local government system would have made positive impact in the training of young politicians for greater roles in the future and bring grass root development to the people as well as help in the deepening of democracy in the country but for the constraints. This paper argues that time has come for these constraints to be removed to allow local authorities play their roles in the effective development of Africa's largest democracy.

Keywords: *Local governments constitutional constraints, autonomy, financial independence*

1. Introduction

It is trite to state that in all countries operating the local government system of government that this level of government is regarded as the third tier after the Central / Federal and the Regional / State Levels with specific functions to be carried out by elected officials and the bureaucracy.

The 1999 Constitution of Nigeria as amended made provision for this in sections 7 and 8 and provided for their functions in the 4th Schedule. However, section 162 of the same Constitution which created the State/Local Government Joint Account and other provisions in the Constitution appear to make nonsense of the powers of these local authorities to operate as a tier of government in proper sense.

These days, only few local governments have elected officials as the State Governors prefer to appoint Caretaker Chairmen and Councilors to run the Councils. In similar vein, statutory allocations from the Federation Account are collected and spent for them by the State Governments which treat them as units of the States Ministries of Local Government.

In order to have in-depth appreciation of how to rescue local governments from this quagmire, we shall look at the meaning of local governments or authorities, their evolution in Nigeria, functions and constraints and of course the practice in other jurisdictions before making our recommendations as to how they can fulfil their mandates in Nigeria.

2. What is Local Government or Local Authority

The expression "local government" or "local authority" is nowhere defined in the Nigeria Constitution but is commonly regarded as the lowest tier of government in the Country. It is usually composed of democratically elected Chairman and Councilors who are supposed to serve for a fixed term the urban and rural populace who elected them. There is also the bureaucratic arm of same which is made up of civil servants with professional experience who serve it as officials.

The *Black's Law Dictionary*ⁱ defines "local government" as:

"The government of a particular locality, such as a city, county, or parish; a governing body at a lower level than the state government." In similar vein, the *Guidelines for Local Government Reform, 1976* in Nigeria defines it as:

- Government at local level exercised through representative councils, established by law to exercise powers within areas... has 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 ensure that local initiative and response to local needs and conditions are maximized.ⁱⁱ

"Local authority" has on its own been defined as "a body charged with the administration of local government, for example a county council, a district council, a London borough council or a parish council".ⁱⁱⁱ

Thus, though the Constitution does not define local government or local authority in Nigeria, we can gather from the above that local government refers to the lowest level of government with elected officials to take care of certain conditions peculiar to their localities and that they operate below State Governments while local authorities refer to the bodies that control the affairs of local governments.

They vary in sizes and numbers from jurisdiction to jurisdiction. In Nigeria, there are 774 (seven hundred and seventy-four local governments)^{iv} whereas in the United States of America (U.S.A) there are 89, 055 (Eighty-Nine Thousand and fifty-Five) local governments according to the 2012 Census of the country. In Brazil the number is 5,507 local governments while India has over 200,000 *panchayats* (local governments). The population of the Councils also vary depending on the geographical size of the area and the population density save that in Nigeria a local government is not expected to have a population of less than 150,000 (One Hundred and Fifty Thousand) inhabitants.^{vi}

In Nigeria, section 7 (1) of the Constitution provides:

- The system of local government by democratically elected local government councils is under 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 courts since 1979 when this was inserted in the Constitution had held that this provision is a constitutional injunction which must be complied with by the two senior tiers at the Federal and State. Thus, in *Akan V. Attorney-General of Cross River State*^{vii} it was held:

- This section is firstly a declaration by the constitution of a system of local government by means of democratically elected Local Government Councils and secondly, a mandate or order to the government of every State to ensure that such councils are established under a law. This is a compulsory non-discretionary obligation. No State Government can act in this respect under a law that does not provide for Councils that are democratically constituted, or rather constituted by means of democratic election.

Thus, where Local Government Council Officials were appointed by the Governors and not by election, such exercise had been held to be unconstitutional null and void.^{viii} In similar vein, it has been held that a State House of Assembly has no power to make law that provides for nomination of council members instead of normal elections into councils. That was the decision of the court in *Amodu v. Governor of Oyo State*.^{ix}

A typical structure of a local government in Nigeria as enshrined in the 1976 Reforms are as follows: the Political Arm which is made up of the elected Chairmen and his appointed supervisors who form the Executive; the elected Councilors who form the Legislature and civil servants who carry out day to day functions as career staff and are apolitical: The Civil Service is made of Administration Department; Finance Department; Education and Social Welfare Department; Health Department; Works Department and Agriculture Department all headed by senior career officers.^x There are altogether 6 (six) departments in a typical local government in Nigeria but some States such as Ebonyi State^{xi} have added the seventh department which is Planning, Research and Statistics (PRS).

Thus, in Nigeria a typical local government has the attributes of a tier of government that is a legislature and an executive council but judicial arm.^{xii} We have taken time to explain this because as we shall see later, the operators of our nascent Constitution have rendered the extant rules inoperative, hence the purport of this paper and something has to be done to save this tier of government.

3. History of Local Governments in Nigeria

The history of "local government" in Nigeria is rather a chequered one. The name has not always been local government as same had been known severally as "Native Authority", "County Council," "Divisional Council" and "District Council" to mention but few from different parts of the country. This requires a long story to be told but since the object of this paper is to find solutions to legal bottlenecks militating against the operation of the current local governments, we shall be brief to the point. In doing, this we shall take it in phases that is to say: what was the situation before our colonization by Britain, the situation between 1914 and 1960; local governments during the 1st Republic of Nigeria, local governments during the first phase of military rule and finally the position in the 1980s and 1990s. This brief discussion will enable us to know when the problem of local government (s) started and that will prepare ground for other issues and possible remedies.

3.1. The Period before Colonialism

Afro-centric writers and historians hold the view that before the colonization of Africa by Europeans, that the Continent had rich culture and civilization which enabled the people to live in peace and organized themselves very well. In Nigeria, this was very manifest in the government set up by the three biggest ethnic groups in the country, namely Hausa, Igbo and Yoruba before the arrival of Europeans. We shall use the three as examples of the historical position before colonization in the 19th Century.

3.1.1. Hausa-Fulani Political System

Before the islamisation of the diverse geographical area known as Northern Nigeria by Uthman Dan Fodio between 1804 and 1809, the area was ruled as City-States which had monarchical set up. The city states were ruled by kings (Sarikins) who had enormous powers over their subjects. However, between 1804 and 1809 Fodio overran the bulk of the area after his Jihad and established a theocratic State with headquarters at Sokoto where his son, Bello was based as the leader while the Eastern flank with headquarters at Gwandu was under the control of his younger brother, Abdullahi.

The Fulani Jihadists after the sacking of the Hausa Kings reformed the system of government and imposed purely Islamic culture but still retained Hausa language as the lingua franca of the Caliphate.^{xiii} The Jihadists therefore installed their members as kings of the conquered City-States with the title of Emirs and the Sultan as the overall leader based at Sokoto. The Emirs had their Ministers of State whose titles and functions now assumed Islamic flavor. Some of the old offices under the overthrown government of the Hausa kings that were retained included such as the Galadima, the Madawaki, the Magaji, the Yauri, Sarkin Dogarai, Sarkin Yandoka and the Alkalis etc. who were responsible for different State duties.^{xiv}

Under the Emirs were District Heads who reported to the Emirate Councils, just as village Heads reported to the District Heads. The government was therefore stratified with officials at each level knowing their specific functions all founded on Islamic precepts. This was in brief the political situation in nearly all parts of the present Northern Nigeria, save that in some areas such as the present Plateau State, Taraba State, Benue State and Southern Kaduna, the Jihadists did not conquer the tribes and they retained their administrative culture of being ruled by their native kinsmen and of course retained their method of worship to God.

3.1.2. Igbo Political System

The Igbo people are located in the present South-East and part of South-South of Nigeria and their style of government was based on Democratic Village Republics and in some places Constitutional Village Monarchies which did not hold large populations comparable to what we had in the Hausa and Fulani enclave. The Igbo society was organized and is still organized into clans or group of clans known as 'Obodo' which in turn were and are still divided into villages and it was the village that constituted the State authority as Village was the basis of the government. Each village traced its origin to a common ancestor.

The government of a village consisted of two major organs: The Council of Elders and the Village Assembly^{xv}. The Council of Elders consisted of the Heads of families known as kindreds. The Head of the Council was called the '*Okpara*' who acted as the political as well as the spiritual leader of the village. The '*Okpara*' held the staff of office known as *Ofo* which was symbol of authority.

The other institution which was the Village Assembly was the Supreme organ of the village administration where all important decisions affecting the village were taken and responsibilities for implementation assigned to individuals and groups. Every adult male was a member and had right to air his views. Meetings were held as frequently as the need arose and the spokesmen or chairmen were changed depending on the issues at stake. At the Assembly, Select Committees were appointed to go and discuss the issues raised and proffer solutions. After the discussion by the committee, it would report back to the Assembly which might accept the report in full or with some amendments. Decisions were arrived at through consensus and not by voting. The playground or market place was usually the venue of the Village Assembly. Thus, the Igbo practiced a better form of democracy than what had been ascribed to the Greeks of Europe.

Apart from the Council of Elders and the Village Assembly, we had the Age Grade members of both sexes who participated in carrying out one function or the other in the society; the Priests of Oracles who played judicial roles as and when necessary and the *Umuadas* (daughters of the village) who had one function or the other in the running of the village administration. The Village Assembly also played major role in judicial matters as cases were settled by it and 'difficult' ones referred to the Priests of Oracles.

Finally, in some places, we had Constitutional Village Monarchies such as Obi of Onitsha, Eze of Arochukwu, Asagba of Asaba, Obi of Agbor and Eze of Oguta but these did not establish governmental structures holding large populations comparable to the Hausa-Fulani. In other words, the Igbo political system was not tailored to large State structure, hence the contention that it was 'a stateless society'. But we are saying that the Igbo people had a democratic and egalitarian system of government that satisfied their individual and collective needs before colonization in the 19th century. No wonder, the people had to react violently in 1929 when women rioted at Aba and its environs over alien system of government epitomized by the use of Warrant Chiefs as Leaders of the people.

3.1.3. The Yoruba Political System

The Yoruba like the Hausa-Fulani had city-states. At the head of each city-state was the '*Oba*' whose powers were checked by a group of nobles known as the '*Oyo Mesi*'. The city-states had sub-units ruled by *Bales* or lesser *Obas*. The Ife town was and is still regarded as the cradle of the Yoruba civilization.

At the peak of the famous old Oyo Empire between 1388 and 1431 it was recorded^{xvi}, that the highest political leader was the *Alafin* of Oyo whose authority covered beyond the present-day Yoruba land. The *Alafin* had elaborate court of priest, officials and eunuchs. The power of the *Alafin* was checked and balanced by a group of seven nobles called the *Oyo Mesi* who acted as King Makers. The *Bashorun* who was regarded as the Prime Minister acted as the Chairman of Oyomesi.

The *Alafin* governed on the advice of the *Oyo Mesi* and he could be deposed by the Council if he became autocratic or no longer tolerable. This they did by presenting the *Alafin* with "empty calabash" which was symbolic of an order to commit suicide. The *Ogbonic* was another institution in the government of old Yoruba and it played the role of mediating whenever there was dispute between the *Alafin* and the *Oyo Mesi*. Thus, the Yoruba had comparable large state structure and government that could be said to be States in modern sense. It should also be noted that after the fall of the old Oyo Empire, the former component city-states formed kingdoms where *Obas* were at the heads with designated State officials while the *Bales* operated at the village levels. This is in brief the position in Yoruba land before colonization.

3.2.1. Between the Amalgamation in 1914 and the 1st Republic, 1960-1966

Notwithstanding the initial posture of the British Government that it was not interested in territorial expansion of any sort in the 19th Century, it had from 1861 started changing its position by the declaration of Protectorates over Northern Nigeria^{xvii} and Southern Nigeria on 1st January, 1900.

Before this period, these **two Protectorates** were partly under the control of British officials as well as the Royal Nigeria Company which had its charter revoked to enable the government take full control of the large enterprise.^{xviii}

On 1st January 1914, Sir Frederick Lugard (later Lord Lugard) who was formerly the High Commissioner in charge of the Protectorate of Northern Nigeria and later Governor was appointed the Governor of the Colony and Protectorate of Nigeria following the unification or amalgamation of the Northern and Southern Protectorates.

It should be noted that Sir Lugard had at the inception of his leadership of the Northern Protectorate introduced a system of government in the area which was known as **Indirect Rule** following the experience he had at India where he had served as Military officer. Indirect rule means a system of government where by the natives were allowed to rule their people under the supervision of few British officials. Thus, he retained the Hausa-Fulani system of government which he met in the North and only used few Britons to supervise them. The reasons for this posture ranged from existing good political structure to lack of funds to engage many career officers and the need to avoid revolt by natives.

Having settled down as the Governor-General of Nigeria as an entity in 1914, Lord Lugard proceeded to introduce the indirect rule in the whole Nigeria. This, he justified in his work^{xx} and this was to be the beginning of the real story of modern form of local government in Nigeria. In the year 1916, Sir Frederick Lugard signed into law, the *Native Authority Ordinance* which introduced the indirect rule system in the whole country arguing that it was meant to protect the political culture of the native tribes and to avoid possible revolts in future as experienced in India where he had served previously.^{xx} Thus, the law was applied in the whole Colony and Protectorate of Nigeria as from 1916 and that meant that his experience in Northern Nigeria where he met efficient traditional political system after the conquest of the Sokoto caliphate propelled him to believe that indirect rule would work in every part of the unified entity.

The indirect rule system succeeded fully in Northern Nigeria particularly in the areas covered by the defeated caliphate. It partially succeeded in Western Nigeria because of existing traditional political culture of the area but failed totally in Eastern Nigeria because of the existing independent democratic village republics which saw indirect rule as alien culture. Here, the colonial powers made use of "Warrant Chiefs" in Eastern Nigeria to make up for Emirs in the North and Obas in the West. This was met with resistance culminating in the Aba Women Riots of 1929^{xxi}.

Due to nationalist activities by the emerging elites and the improvement in political and social situation of the people of the Colony and the enactment of the *Richards Constitution 1946* and others before it, the consciousness of Nigerians began to build up. Thus in 1950, the Eastern Regional Government introduced the *Eastern Region Local Government Ordinance* which abolished the Warrant Chief System and introduced what can be called modern local government system. It introduced three layer-local government systems with **Counties** at the apex and **Districts** at the middle and **Local Councils** as the lowest. Due to operational challenges, County Councils were abolished in 1959.^{xxii} In the 1960, the law was amended and now called **Local Government Law 1960**.

It is important to note that it was the flexibility and amenability of this system to the needs of the people that made it a master piece. Section 2(1) of the Law provided that the Minister in charge of local governments might establish any of the councils as he deemed fit provided he got the approval of the Governor-in-Council. The Minister might designate such councils as Municipalities under County Councils, District or Local Councils depending on the requests from the local area. Over 80% of the members of these councils were elected by the electorate and the councils had specific functions assigned to them by the law and power to levy taxes. Gold Coast (Ghana) in 1951 copied the Eastern Regional Law on local government just as Western Region did the same in 1952 because of the suitability of the law to their circumstances.^{xxiii}

Thus, at the end of the First Republic of Nigeria on 15th January 1966, the position as regards local government could be summarized as hereunder stated. In the Eastern Region, the *Local Government Law 1960* was operative with three-tier local government system under the supervision the Regional Administration. In the Western Region, the system in operation was three-tier local government system with Division at the apex, followed by District (which might be Urban or Rural) and Local Councils. This was because the Region amended the model it copied from the East in 1957. The Mid- Western Region which was carved out from it in 1963 retained the Western Regional Model of three-tier local governments whose officials were elected and have some degree of financial autonomy.

In the Northern Region, notwithstanding the favourable political climate for the use of the *Native Authority Ordinance of 1916*, nationalist activities and changes in the Colonial Constitutions forced the Regional Government to enact the *Native Authority Law 1954* which was amended in 1955, 1958, 1960, 1961 and 1963.^{xxiv} These amendments enabled traditional institutions to work with some level of democratic councils. This was particularly so to take care of agitations by Christian and Pagan communities in the North such as the Middle Belt tribes. Thus, by the changes in the Native Authority Law, the North had such classifications as the **Chief-in-Council** where the Emirs had absolute authority; **the Chief-and- Council** where the Christians and Pagans had control with some form of democracy and lastly, **the Council** which was constituted by tiny villages. Caretaker leaders were appointed by the Regional Government for the Councils at the lowest level as there were no elections therein. This was the position of local governments nationwide before 1966 and that position was so because local government was a Regional item, solely under the control of Regions as second-tier partner in the Federation.

3.3. Local Governments between 1966 and 1999

The high points of our discussion here is to state broadly that local governments in Nigeria became major casualty to the quasi-federal system introduced by the Military which started with the *Constitution (Suspension and Modification) Decree No. 1 1966*.^{xxv} The said Decree (now Act) took up all the items from the Legislative Lists and Regional Leaders (Military Governors / Military Administrators) took permission before they acted on items even in the former residual lists meant for the Regions in the 1963 Constitution.^{xxvi} Thus, the Local Government suffered because of the unitary posture of the government at the centre. The local government remained without elected officials (save between 1976 and 1979) and the designated Councils were under the control of career civil servants.

However, it has been contended and we agree that the local government fared better between 1966 and 1975 under State Governments than what became of local governments under the 1976 Unified Local Government Reforms, the 1979 Constitution and the present 1999 Constitution of Nigeria.^{xxvii}

Thus, between 1966 and 1975, there was confusion with regard to which form of local government should be applied. In the East Central State, the government now enacted *Divisional Administration Edict*^{xxviii} which created **Divisions** at the apex, **County Councils** at the middle and **Community Councils** at the lowest level. In the Western and Mid-Western States, they tried Professional Management Boards for Local Governments which failed while in the North the Native Authority System pervaded with some changes in the middle Belt.^{xxix} No wonder in 1976, the then Head of State General Olusegun Obasanjo thought of local government reforms.

3.3.1. The Unified Local Government Reforms, 1976

In 1976, the Federal Military Government under General Olusegun Obasanjo introduced major reforms of local governments in Nigeria. The instrument for the reforms was *Guidelines for Local Government Reform 1976*^{xxx} which can be highlighted as follows:

- (1) Introduction of a uniform system of local government in all the States of the Federation.
- (2) Recognition of local government as third-tier of government.
- (3) Recognition of single-tier all-purpose Local Government Councils all over the Country, with the name Local Government Areas.
- (4) Prescribing a population size of between 150,000 and 800,000 people for local government councils save in exceptional cases.
- (5) Democratization of local governments which led to existence of elected Executive Branch and elected Legislature who worked on full time basis instead of receiving sitting allowances only.
- (6) Creation of Local Government Service Commissions in the States to handle Civil Servants matters.
- (7) Limiting the influence of traditional rulers on the Local Governments.
- (8) Preparing of ground for the entrenchment of local government in the 1979 Constitution of Nigeria.
- (9) The Funding of Local Government by the Federal Government through Statutory allocations from the Federation Account.
- (10) The first full reform of Local Governments throughout the Country by the Federal Government.

In his *foreword* to the *Guidelines*, the then Chief of Staff, Supreme Headquarters, Brigadier Shehu Musa Yar'Adua among other things said that the *Guidelines* were meant for the States to implement and not a sort of imposition; that it was not meant to do away with Emirs, Obas and Chiefs but to bring a fundamental change in the political structure of the Country which will culminate in having a third-tier of government that would bring about development at the grass root. It was also to avoid abuses in the old order that the *Guidelines* were issued.^{xxxi}

Following the Guidelines on Local Government reforms which came as part of transition to civil rule by the Obasanjo Regime, new local governments were created in 1976 and elections held nationwide in all the Local Government Areas of the Country. Thus, Chairmen and Vice Chairmen of Local Government Areas were elected to administer the councils as Executive arm while Councilors were elected to manage the Legislature which made Laws for the Councils. The Government while handing over power to civilians in 1979 introduced local governments into the 1979 Constitution in the spirit of 1976 Reforms.

3.3.2. Local Governments under the 1979 Constitution

The Federal Military Government in fulfilment of the spirit of the 1976 Local Government Reforms provided in *S. 7 of the Constitution* that this entity should be treated as third tier of Government and that the States shall have power to create Local Councils using the criteria comprised in the *Guidelines*.

Thus, in *section 7 (2) the Constitution* provided:

“The person authorised by law to prescribe the area over which a local government council may exercise authority shall:

- (a) define such area as clearly as practicable
- (b) ensure to the extent to which it may be reasonably justifiable, that in defining such area regard is paid to:
 - (i) the common interest of the community in the area
 - (ii) traditional association of the community
 - (iii) administrative convenience”

A local government council in a State shall participate in economic planning and development of the area; shall discharge functions comprised in the *4th Schedule* to the Constitution; shall be governed by elected officials in line with rules guiding national elections.^{xxxii}

Subsection 6 provided:

“Subject to the provisions of this Constitution

- (a) The National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federation.’
- (b) The House of Assembly of a State shall make provisions for statutory allocation of public revenue to local government councils within the State.”

Thus, it provided for joint funding of local governments by the Federal and State governments.

The 1979 Constitution did not concern itself with modalities or procedure for creation of local governments as it did for States creation in section 8. In the same vein, it merely listed the existing local governments as components of the then existing 19 States and did not mention the number as a bar to future creations under that Constitution.^{xxxiii} In the case of *A.G. of Imo State v. A.G. of Rivers State*^{xxxiv}, it was held that a State government had no barrier to create new local governments under the 1979 Constitution.

Another salient provision of the 1979 Constitution was the establishment of the “Federation Account” for the whole country.^{xxxv} Under section 149 subsections (4) and (5), the Constitution provided for “State Joint Local Government Account” into which funds meant for local governments in the States shall be paid into for the purpose of sharing such funds amongst them. The State House of Assembly shall make laws on how the funds should be shared amongst the local governments in each State^{xxxvi}.

Apart from few constitutional cases that were decided on the issue of power of State Governors to institute caretaker committees for local governments which were all in the negative as shown hereinbefore, the local councils were safely in existence between 1979 and 1983.^{xxxvii} The Local governments as listed in the 1979 Constitution remained as the civilians met them but later massive wave of States and local governments creations took place all over the country under future military officials from 1st January 1984.

Thus, between 1st January 1984 and 1985 August;^{xxxviii} 27th August 1985 and 27th August 1993;^{xxxix} August 28th 1993 and 17th Nov. 1993^{xl} and Nov. 18 1993 and June 1998,^{xli} Nigeria had witnessed four governments that tampered with the very existence of local governments in Nigeria.

Under the political transition programmes of General Ibrahim Babangida which spanned between 1986 and 1993, he created more local governments in the country without regard to the *Guidelines* in favour of his Northern Nigeria.^{xlii} General Sani Abacha followed the footsteps of his brother, Babangida and by 1999 when General Abdulsalmi Abubakar was handing over the 4th Republic to the civilians, we had arrived at the current number of local governments in Nigeria.^{xliii}

3.3.3. The Local Governments and Constraints in the 1999 Constitution

The 1999 Constitution is virtually a replica of the 1979 Constitution, particularly as it concerns local governments. Like the 1979 Constitution, it makes it clear that: “Nigeria shall be a Federation consisting of States and a Federal Capital Territory.”^{xliiv} This puts to rest the argument that both Constitutions made the local governments autonomous third tier after the Federal and State governments. At best, the local governments are statutory and or derivative third tier not intended to be fully independent of the two senior tiers.

Since the crux of this paper is the constraints created by the current Constitution, we shall proceed to highlight them and go on to comparative issues, before talking of the way forward.

Section 7 of the 1999 Constitution contains the same provisions as *section 7 of the 1979 Constitution* by recognizing local governments as a tier of government to be supervised by States. Section 3 of the same 1979 Constitution also contains almost same provisions as section 3 of the 1999 Constitution except that in the latter the Constitution listed the 768 local governments thus:

- 3 (6) there shall be seven hundred and sixty-eight local government areas in Nigeria as shown in the second column of councils as shown in Part II of that schedule.

By this provision, the local governments are elevated to an integral part of the Union whose personalities cannot be toyed with except by constitutional amendment. This is unlike the situation in 1979 when the local governments were listed merely as components of the respective States.^{xliv}

The second constraint for local governments in the 1999 Constitution is the manner of their creation. Section 7 as already stated empowers State Governments to create and nurture local councils and the actual procedure is detailed in section 8(3) (5) and (6) of Constitution:

Section 8(3) provides as follows:

- A bill for a law of a House of Assembly for the purpose of creating a local government area shall be passed if-
 - (a) a request supported by at least two-thirds majority of members (representing the area demanding the creation of the new local government area) in each of the following, namely.
 - (i) the House of Assembly in respect of the area.
 - (ii) the local government councils in respect of the area is received by the House of Assembly;
 - (b) a proposal for the creation of the local government area is thereafter approved in a referendum, by at least two-thirds majority of the people of the local government area where the demand for the proposed local government area originated;
 - (c) the result of the referendum is then approved by a simple majority of the members in each local government council in a majority of all the local government councils in the State
 - (d) the result of the referendum is approved by a resolution passed by two-thirds majority of members of the House of Assembly.

The above stipulation which is easily achievable by a State in need of more local governments is hampered by section 8 (5) which states:

- An act of the National Assembly passed in accordance with this section shall make consequential provisions with respect to the names and headquarters of States or local government areas as provided in section 3 of this Constitution and in Part I and II of the First Schedule to this Constitution.

Complicating issues further, section 8 (6) provides:

- For the purpose of enabling the National Assembly to exercise the powers conferred upon it by subsection (5) of this section, each House of Assembly shall after the creation of more local government areas pursuant to subsection (3) of this section make adequate returns to each House of the National Assembly.

The implication of the above is that though States can create local government areas, the exercise will not be complete until the National Assembly makes approval which will entail ratification of the names and headquarters for purposes of listing them in the Constitution. This is perhaps the greatest constraint on local governments in Nigeria which has led to a plethora of litigations in the country since 1999 when States created local governments in their domains and the National Assembly refused to play its own part.

The most cited case in connection with dispute over local government creation is that of *A.G. of Lagos State v. A.G. of the Federation*^{xlvi}. The brief facts of this case being that the Lagos State Government relying on section 8 (3) of the Constitution created

37 new local governments out of the existing 20 local governments, thereby bringing the total number of local governments in the State to 57. The State went ahead to conduct elections into the old and new councils even when the National Assembly had not acted pursuant to section 8 (5) and (6) and section 3 (6) of the Constitution. The Federal Government directed Lagos State Government to revert to the old 20 Local Governments arguing that the existence of 37 new councils was unconstitutional. It threatened to seize funds going to the Local Governments in the State and in fact later carried out its threat. The Lagos State Government approached the Supreme Court for judicial intervention and so many legal principles came out of the case.

Chief among the ratios being that the 37 new local governments created by the Lagos State Government were yet to be fully so as the National Assembly had not enacted its own consequential Act as required by section 8 (5) and (6) of the Constitution to bring them into existence; that the *Local Government Law No. 5 2002* of Lagos State passed by the House of Assembly was not enough to give life to the new local councils until section 3 (6) of the Constitution is amended to include them in Part I of the 1st Schedule to the Constitution and that for a State to receive funds pursuant to section 162 (3) and (5) of the Constitution, such local governments must be legally and constitutionally created and finally that the action of the President in withholding statutory financial allocations to Local Councils in Lagos State was not proper as he ought to have approached the Court for interpretation of the legal position.

The Lagos State case led other States that had created local governments without the input of the National Assembly to change the nomenclatures to either "Development Areas" or "Development Centres" to avoid the bitter experience of Lagos State government.^{xlvii}

Commentators have roundly condemned the decision of the Federal Government in the way it handled the Lagos States case as if it was the only State that created new local governments under the 1999 Constitution.^{xlviii} The result of this case is that it created constitutional crisis and no new local governments have been "duly" created under the Constitution but many States now have what they designate Development Areas or Development Centres or Development Councils to avoid the Lagos State's experience.

Another impediment to the operation of local governments under the current Constitution is the issue of funding of the Councils as stipulated under section 162 of the Constitution. Section 162 creates "the Federation Account" for the sharing of National revenue among the Federal, States and local governments. Section 162 (5) provides that funds standing to the credits of local governments in a State shall be allocated to such State for distribution to the local Governments. Each State shall maintain "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the States.^{xlix}

Each State shall disburse the monies allocated as stated in subsection (6) above using criteria set by a law of the State House of Assembly.¹

The experience since 1999 is that the State Governments have not been faithful in releasing the funds meant for local governments. Instead, they give peanuts to the councils and use the bulk of the funds in the name of joint projects with the councils. This has attracted wide range of condemnations from private persons^{li} and institutions.^{lii} In the latest remark by Mr. Damilola Oyedele, he called on the House of Representatives to pursue with vigour the enactment of "a Bill to Alter section 162 of the Constitution of the Federal Republic of Nigeria 1999 and for other Matters" which is currently before the parliament which is aimed at achieving financial autonomy for the 774 Local Governments in the Country. The main aim of the law if passed is to amend S. 162 (7) of the Constitution to allow local governments to get their allocations directly from the Federation Account Committee instead of States.

Finally, in our view, the worst of the constraints is the manner of electing local government officials. Section 197 (b) of the Constitution provides for State Independent Electoral Commission for the purpose of conducting elections into the local governments. By section 200 of the Constitution, a member of the State Electoral Commission should "not be a member of a political party". This is to ensure neutrality and transparency in elections, but State Governors abuse this provision and appoint card carrying members of their political parties as members of the commission with the attendant consequences.

However, what we have seen at the States with regard to local government elections is mockery of democracy. Every election in each State has always been won landslide by the ruling party irrespective of the relative strength of other political parties in the State. In some States, local government elections have not been held since 1999 and Caretaker Committees are the operative organs and this is one of the reasons why the House of Representatives wants to abolish State electoral bodies and for the Independent National Electoral Commission (INEC) at the Centre to conduct both Federal, States and local government elections as it was before 1999.^{liii}

4. Comparative Look at other Jurisdictions

In the United States of America (U.S.A) from where Nigeria copied the Presidential system, local governments started as community civic republics and community enterprises to serve group interests.^{liv} Later on, these entities started getting charters from the State governments to enable them render one service or the other to their immediate environment. In the United States, there are in existence "general -purpose" and "single-purpose local governments." General purpose local governments are those that perform a wide range of functions such as counties, municipalities, towns and townships while single-purpose local governments have specific functions such as running of schools, sewage disposal management and other special duties.

Thus, we have under the supervision of States, thousands of different local governments operating under State Constitutions in U.S. They go by different names, have their own sources of income which are supplemented by special grants from the States which leave them with some degree of financial autonomy. In the U.S. the States collect their revenues and pay 50% of it to the Federal Government as taxes, hence their form offederalism is seen as a loose one.

At the last count, there are 89,055 (Eighty-Nine Thousand and Fifty-five) known local governments in America and each is under the different States and are discharging their duties based on State Charters and Constitutions.^{lv} In other words, local governments in America are not fully autonomous but have some degree of financial autonomy and conduct free and fair elections.

In Brazil, the country operates a federal system with three-tier government structured as contained in the 1988 Constitution of the country.^{lvi} There are 26 States in Brazil and each with her Constitution, Governor and Legislature. The States are divided into 5,507 municipalities (local governments) which are further divided into districts. Each municipality has its own elected Mayor and Council.^{lvii} The States and Municipalities are subordinate to the Federal Government. There is some degree of financial autonomy for the municipalities whose responsibilities cover road construction, creation and maintenance of public parks, museums and primary education. Hence, though Brazil has three tier structures, the local governments are under the States.

India is another country running a three-tier federal system with States and the Panchayats (local governments) as the second and third tiers respectively. By the 73rd and 74th Amendments to the Indian Constitution, 1993, the Panchayats (local governments) became official third tier level of the Government in the country.^{lviii}

Commenting on the effect of the India Constitutional amendment in 1993, Professor G. Mathew stated:

- First, the democratic base of the Indian polity has widened. Before the Amendments, the democratic structure of India through elected representatives was restricted to the two Houses of Parliament, 25 State Assemblies and two assemblies of the Union Territory... They had just 4,963 elected members. Now there are more than 589 District Panchayats, 6,904 Block/tehsil/Mandal Panchayats at intermediate level and 239,000-gram Panchayats in rural India where about 72 per cent of India's population lives.

The point we just want to make is that Local Governments (Panchayats) in India as at December 12, 2015 were about 246,493 in both Urban, Intermediate level and Rural Areas. The 25 States and Federal Government contribute however to their sustenance as third tier level of government.

Thus, we can see that in the three large democracies studied, the local government councils do not have total independence or autonomy in the sense Nigerians would like to have it but their systems are working better than that of Nigeria.

5. The Way Forward

At the commencement of this paper, we posited that Local Governments are established to bring government closer to the masses for their overall development. We also contended that local governments if properly managed can serve as fertile ground for training of young politicians who will be prepared for the senior tiers above them. This as many commentators contend means that local governments in Nigeria should be granted full autonomy in order to enable them achieve the expected results. Local government autonomy in proper sense of the word will mean that local governments must have elected executive arm of government, elected legislative arm of government, functional judiciary of their own, some sort of local law enforcement agency (police) to carry out decisions of the local courts plus over all fiscal autonomy to generate their own funds without any contribution from the other tiers of government. This is not to forget that it will mean organizing their own elections. These are hardly achievable in any country in the world. Even in the United States of America which practices "loose federation" where the State Governments generate their own funds and pay tax to the Centre, there is no such freedom for the Municipalities, Counties, Towns, Townships and other forms of local governments there. These categories of local governments in the U.S.A still maintain one form of connection or the other with the State Governments and the Federal authorities. Therefore, the protagonists of full autonomy for local governments in Nigeria should be reminded that by the provisions of section 2 (2) of the Constitution, Nigeria is a Federation consisting of States and Federal Capital Territory only, hence local governments though third tier cannot canvass for autonomy as erroneously believed.

The question now is, what does Nigerians expect of local governments and how can this be done. Since we have found out that the problem with the current 1999 Constitution is mainly the stringent condition for creation of local governments which prevents States from doing so and another issue being the undue tampering with the funds meant for local governments by State Governments, to allow local governments to work in Nigeria, we hereby suggest as follows:

That *section 8 (5) and (6) of the 1999 Constitution* should be expunged to allow States of the Federation to create as many local governments as they consider necessary for their people. These local governments could be graded into Municipalities, Towns, and Local Councils depending on the environment. This is what happens in developed democracies like U.S.A, India and Canada. In Nigeria today, we have only 774 local governments but U.S.A, another country like us running the third tier Federal System has 89,055 Local Governments as at 2012 and more than that number now. Brazil has 5,507 Local Governments and India has over 246, 493 (panchayats) local governments. So, the argument that States will create local governments indiscriminately if not checked by the Federal Legislature in Nigeria goes to no serious issue as we can see that in Nigeria the number of local governments are still very small compared to other democracies with nearly the same population as Nigeria. Consequently, all we need is clear criteria for States to create local governments which must be gazette for purposes of knowing their number per State so as to enable the federal government to know the actual number of local governments in each State for purposes of distributing funds directly to them when the need arises. This will make it unnecessary for local governments to be listed in the Constitution as it is now which makes them part of the Constitution and which will entail constitutional amendment whenever there is any change in their number in any State of the federation. If this is done, the problem of local government creation will no longer be there again.

To avoid the current situation whereby the funds for local governments from Federation Account are tampered with by the States using the State Local Government Joint Account under *section 162 (6) and (7) of the Constitution*, it is our recommendation that section 162 (6) and (7) should be expunged and new subsection added that will empower the Federal Fund Allocation Committee to transfer directly to the accounts of known local governments in the States whatever is due to them from whatever is agreed as statutory allocation going to all classes of local governments in a particular State. This will stop the current situation whereby State Governments mix up and spend statutory allocations meant for local governments because it is under their management. We note however, that these funds to be transferred to local governments will be received by career staff employed by Local Government

Service Commissions managed by the States and that will require that the Federal Government should have proper mechanism to prevent these officers from being coerced into doing what the State Governments want and not what the Councils want as beneficiaries of the funds. In doing this however, the funds for running primary education and salaries of staff of the local governments should be deducted at source to avoid the problem of nonpayment of salaries of teachers and other staff of local governments which are often the problems encountered when funds get to local governments direct from the disbursing authorities. This is a task for the Federation Funds Allocation Committee and it is worthwhile to avoid the problem making local governments a mockery in Nigeria.

In order to ensure that local governments achieve the purport of their creation, that is, to entrench democratic culture at the grass root, it is our recommendation that all States Independent Electoral Commissions should be scrapped. Elections for local governments nationwide should be conducted by the Independent National Electoral Commission since State Governments have shown that they do not have the maturity to organize free and fair elections. Let the conditions under the 1979 Constitution prevail so that proper elections could be used to bring about growth of democratic culture at the grass root in Nigeria. This will enable smaller political parties to field good candidates at the grass root and win elections. This will invariably engage the energies of very many youths who are looking for where to work which they cannot find because the two major political parties (PDP and APC) have taken over the available political space.

Finally, the frequent demand for the restructuring of Nigeria is another answer to solving the problem of local governments in the country. This restructuring should be by devolving some powers from the Exclusive List which currently stands at 68 items in favour of the Federal Government to the State Governments and of course the Local Governments. This will invariably mean allocation of more funds from the Federation Account to the States and Local Governments. Currently, the Federal Government takes about 52% of the monthly statutory allocation of the country while States and Local Governments take roughly about 42%. It is our belief that if States are given more responsibilities and more funds from the national revenue, they will allow local governments to spend their funds without interference. This recommendation is without prejudice to our recommendation that local governments be allowed to receive their allocations directly from the Federation Account Allocation Committee, Abuja.

It is our belief that if the above suggestions are implemented that the local governments will improve on their essence in Nigeria.

6. References

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- ii. K. Mowoe, *Constitutional Law in Nigeria* (Lagos: Maltouse Press Ltd, 2003) Pp. 193-194
- iii. Mick Woodley, *Osborn's Concise Law Dictionary* 10th ed; (London: Sweet & Maxwell, 2005) p. 250
- iv. See Part 1 and 11, First Schedule to the 1999 Constitution as amended. It was 768 Local councils as at 1999 but now 774 because of some additions made subsequently.
- v. See <U.S. Census Bureau 2012 Census of Government(<http://www.census.gov/govs/cog2012>)> accessed on March 22, 2017 by 10pm
- vi. See *Federal Military Government: Guidelines for Local Government Reform*(Kaduna: Government Printer, 1976)
- vii. (1982) 3 NCLR 881. See also *Balogun v. A.G. of Lagos State* (1984) 5 NCCLR 447 at 574 where similar view was expressed
- viii. See *Adeniji Adele v. Governor of Oyo State* (1982) 3 NCLR 698. See also the recent case of *Dogari & 4 ors v A.G. of Taraba State*(2011) ALL FWLR (Part 603) p. 1926 at 1974-1975
- ix. (1983) 3 NCLR 881
- x. See B.O. Igwenyi, *Modern Constitutional Law in Nigeria* (Abakaliki: Nwamazi Printing and Publishing Co. Ltd, 2010) pp. 416-418
- xi. See some other Eastern States of Enugu and Abia
- xii. This judicial arm may not be seen as a serious defect as the Council can use the existing Courts to enforce its laws and the like, after all, States use Federal Courts for enforcement of their own Laws.
- xiii. K.B.C. Onwubiko, *History of West Africa, Book Two*, (Onitsha: African Educational Publishers Nig. Ltd 1972) pp. 107-112; G.T. Stride & C. Ifeka, *Peoples and Empires of West Africa*(West Africa in History 1000-1800) (Lagos: Thomas Nelson Nig. Ltd, 1971) pp 86, 133, 288 and 346
- xiv. Onu John Onwe *The Dilemma of Operating Nigerian Local Government System under the 1999 Constitution*,(Enugu: Snaap Press Nig. Ltd, 2012) pp 15-16
- xv. K.B.C. Onwubiko Op.citpp. 107-112
- xvi. A.A.B. Aderibigbe "Peoples of Southern Nigeria" in J.F. Ade Ajayi & I. Espie (eds) *A Thousand Years of West Africa History*, (Lagos: Thomas Nelson Nig. Ltd, 1965) pp. 193-195
- xvii. In the year 1900 via Order-in-council made on 27th December 1899, see Udo Udoma, *History and Law of the Constitution of Nigeria*(Lagos: Malt House Press Ltd, 1994) pp 23-25
- xviii. See .B.O. Igwenyi, op. citpp 127-135 for full discussion of the historical changes of the time.
- xix. F. Lugard, *Dual Mandate for British Africa*(London: William Blackwood & Sons Ltd, 1923) pp 219-220, 228-229 cited in O.J. Onwe op.citp.23.
- xx. S.O. Okafor, *Indirect Rule (The Development of Central Legislature in Nigeria)*, (Lagos: Thomas Nelson Nig. Ltd, 1981) pp. 37-38
- xxi. O.J. Onwe, op.cit pp26-27

- xxii. U.E. Abba & V. Nwanne, *Local Government Administration in Nigeria (Laws and Practice)*, (Onitsha: Abbot Books Ltd 2007) pp. 76-77. It was the Gibbon's Committee which was set up by the Government of Eastern Region that recommended the three-tier local government system for the area.
- xxiii. It is noteworthy to say that with Constitutional changes between 1922 and 1950, local government became a residual item for the Regions and no longer central government affair.
- xxiv. O.J. Onwe op. cit pp 32-35
- xxv. This was promulgated by the First Military leadership in Nigeria under General J.T.U Aguyi-Ironsi
- xxvi. This position was virtually maintained in subsequent Constitutional Decrees until 1999 when we got the 4th Republic.
- xxvii. O.J. Onwe , op.cit. pp 36-36
- xxviii. No. 18 of 1971
- xxix. U.E. Abba v. V. Nwanne, op.cit pp 91-95
- xxx. Federal Military Government, *Guide lines for Local Governments Reform*, (Kaduna: Government Printer, 1976)
- xxxi. See Generally the Foreword to the Guidelines, op.cit pp. iv-v
- xxxii. See subsections 3,4 and 5 of S. 7 CFRN 1979
- xxxiii. See section 3 (1) and (2) and the First and Second Column of Part 1 of the First Schedule to the 1979 Constitution. This is one of the problems created by the 1999 Constitution which came 20 years after.
- xxxiv. (1983) 14 NSCC 370
- xxxv. Section 149
- xxxvi. Section 149 (7) CFRN 1979
- xxxvii. Described as the Second Republic of Nigeria. It is instructive to State that the new local governments created by Civilian Governor between 1979-1983 were dismantled by the Military Governors who came in after December 31st 1983 coup d'etat by General M. Buhari.
- xxxviii. Under Major General Muhammadu Buhari
- xxxix. General Ibrahim Babangida
- xl. Under Chief Ernest Shonekan
- xli. Under General Sani Abacha
- xlii. Whereas Kano State had the same population as Lagos State, Kano was allotted 44 Local governments while Lagos State was allotted 20 Local Governments etc.
- xliii. The number is 774 now though S. 2 (6) of th Constitution put the numbers as 768 Local Government Areas when Decree No. 24 of 1999 was enacted by the Federal Military Government of General Abubakar.
- xliv. See section 2 (2) which is the same as S. 2 (2) of the 1979 Constitution.
- xlv. See First Schedule, Part 1, 1979 Constitution.
- xlvi. (2004) 122 LRCN `5042. Also reported in (2004) ALL FWLR (Part 244) 805 S.C. See also the case of A.G. Abia State & 35 ors v. A.G. of the Federation (2002) 6 NWLR (Part 763) 264 where powers of the two senior tiers on local governments were outlined.
- xlvii. For example in Ebonyi State the newly created local governments in the State became known as "Development Centres" pursuant to Ebonyi State Development Centres Creation and Related Matters Law, No. 5 of 2006(now Cap. 49 Laws of Ebonyi State of Nigeria 2009. Other States such as Kano, Katsina, Niger, Nasarawa, Kogi, Ogun and etc. followed suit.
- xlviii. See Jude Chizoba Okafor "Constitutional Challenges of Creating New Local Government Areas in Nigeria" <<http://press.lib.uts.edu.au/ojs/index.php/cjlg>> accessed on 23rd March, 2017 by 2pm
- xlix. See section 162 (6) CFRN 1999
- l. See S. 162 (7) CFRN 1999
- li. See Akinyemi Akinlabi, "Independence of Local Governments, Full Autonomy and the Proposed Autonomy" <https://www.thenigerianvoice.com/news/164712/1/independence-of-Local-Goverments-full-autonomy-an.html> accessed on March 22, 2017 by 2pm
- lii. See Damilola Oyedele "Debate on Local Government Financial Autonomy Resurface" <<File://H:Debate On Local Government Financial Autonomy Resurfaces-THISDAYLIVE.htm>> accessed on March 22, 2017
- liiii. See Akinyemi Akinlabi, op.cit
- liv. See Osakede K. Ohiole and Ijimakinwa S. Ojo, "Local Government Autonomy and Democratic Governance. A Comparative Analysis of Nigeria and United States of America" <https://www.arabianjbm.com/JPDS-Vol-9-1/4.pdf>> accessed on March 22, 2017
- lv. See <file://H/local government in the United States-wikipedia.htm>> accessed on March 22, 2017 by 1.50pm
- lvi. See Akinyemi Akinlabi op.cit note no. 51
- lvii. See "Local Government-Brazil" <<file://H:/Local government-Brazil-system.power.htm>> accessed on 24th March 2017 by 11-45am.
- lviii. George Mathew, "Local government system in India" www.pildat.org/publications/publication/FP/Local government system ion India-Background Paper pdf> accessed on 24-3-2017