An appraisal of democratization and rule of law in local government administration in Nigeria

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Abstract: Local government in Nigeria is bedevilled with a lot of inherent problems which almost completely defeat the essence of its creation and subsequent reformation in the first place. Ironically, its unfortunate position is foisted on it by the very document which birthed it – the Constitution of the Federal Republic of Nigeria, by fating its subsistence on the will of the various states. This makes its naissance a stillbirth. This paper adopts theoretical research methodology to address the problems associated with Nigerian local government system whose functioning is willed by state governments, through withholding of local government funds, indiscriminate removal of democratically elected local government chairmen, systematic delays in the conduct of local government elections, etc. The work suggests that an autonomous local government will be better positioned to realize the aspirations captured under Section 1 of the Fourth Schedule of the 1999 Constitution (as amended).

Key words: Rule of Law, Democracy, Local Government, Nigeria

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Introduction

Local government is the tier of government that is closest to the people and perhaps the most important tier to the ordinary man. Although the 1999 Constitution guarantees the creation of democratic institutions and assigns them some tasks, the enabling environment is not there for them to perform those tasks.

The question around which this work is bordered is the linkage between local government administrations on the one hand, as well as democratization and rule of law. These twin concepts (democracy and rule of law) are in so many ways intricately interwoven that the discussion of one in the context of good governance invariably implicates the other. But we shall attempt to confine the discussions along their border lines in the context of an efficient local government administration in Nigeria.

Democracy

Democracy is a form of rule with defining components necessary in every day practice both in government affairs, non-governmental organizations and in all other human relations. The concept is traceable to ancient Greeks in the 5th Century BC.1 Directly translated, democracy means „ruled by the people”. Thus it rests upon the principle of majority

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rule by which decisions made by the majority have to be accepted by all, while minority view points are however respected and protected.\textsuperscript{2}

Democracies avoid all-powerful central governments. Governments in a democracy are often arranged into component units of central, regional/state and local government with each level of government accessible by and responsible to the people. To Abraham Lincoln, democracy is government of the people, by the people and for the people. In the light of this definition, the concept seeks the protection of basic human rights which are often entrenched in the constitution of the state.

Modern democratic rule is premised on some basic tenets or principles which differentiate it from other forms of government. These principles emphasize citizen participation in decision-making processes; equality before the law regarding non-discriminatory opportunities in the realization of individual capacities; political tolerance where the minority have their say even though the majority have their way; accountability of elected public officials to common citizens regarding their actions, decisions or indecisions for the period of their offices; transparency of leaders by allowing for public scrutiny of their activities in office; free, fair and regular elections to allow citizens to decide on who leads them or who should not; separation of powers of the three arms of government such that power is not concentrated too much on any of the arms of government; rule of law which means nobody is above the law. These principles are not exhaustive and not intended to form the basis of this discuss regarding local government administration in Nigeria except the last mentioned.

\textsuperscript{2}Ibidem p. 3.
From the perspective of institutional school of thought, democratization motivates building a system that guarantees fairness, equity and justice to every citizen, irrespective of the party or personality in power. It also canvasses the building of a state on an enduring sustainable democratic culture that guarantees the triumph of rule of law, and the institutionalization of value, principles, practices and processes. Kolawole\(^3\) opines that on this platform, democratization is characterized by the expression of value of respective governments, rule of law, social justice, debate and consensus building the procurement of democracy as a cultural expression which permits a given society by manifesting in the conduct of the citizens. A democratic state is one in which the people are actually in power; it vested ultimate power on the people which with their consent confers legitimacy on government, as well as government programmes and policies.

Democratization is an avenue for political liberalization of the citizens in the use of state power. The conditions mostly crucial for democratization include infusing spirit of liberty, justice, equality and order among the people. Also, democratization as a value in the society and economic political parties must be organized and operated on the basis of democratic values, norms and culture.

Rule of Law

The meaning of the concept of rule of law varies from place to place and from time to time.\(^4\) To Aristotle, the “rule of law is preferable to that of any individual”, while Bracton, writing in the 13th century adopted the theory generally held in the middle ages that the world was governed by laws, human or divine and that the king himself ought not to be subject to man, but subject to God and to the law, because the law makes him king. The concept as we understand it and adopted in developed societies, where democracy has long been a way of life of the people and where despotism or dictatorship is no longer the order of the day, implies and equally connotes that the citizens in relationship amongst themselves inter se and with the government bodies and their agencies shall be beholden unto the law which shall not be ignored by anyone except at his peril, and if by the government, this will promote anarchy and executive indiscipline capable of wrecking the organic framework of the society\(^5\). It is a way of preventing the abuse of discretionary power.\(^6\)

The rule of law is not the exclusive preserve of any single government, it transverses all actions and jurisdiction. It is a universal concept; this is because the International Commission of Jurists has on at least three occasions attempted to throw light on the doctrine. In 1955, in Athens, the Commission declared that the rule of law means that law must bind the state like the governed; all governments must respect individual

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\(^6\) Muhammed Mustapha *op. cit.* p. 4.
rights and provide effective means of enforcing such that judges must adhere to the rule of law and adjudicate without fear or favor. They must resist attempt from any quarter to jeopardize their independence in the performance of their functions and duties.

The principle of rule of law stems from the principle that a democratic government should be able to meet certain universal values and norms that govern democracy.\(^7\) The term prescribes the limit of government and reinforces the importance of the supremacy of law. Dicey, one of the architects of the principle pointed out that rule of law means equality before the law and restraint on the state from absolutism and ensuring accountability by officials in the business of government.\(^8\) According to the United Nations, the rule of law refers to:

> “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers,


\(^8\)Liversidge v Anderson (Appeal Cases, 1942: 206); Mohammed Oluyori and Other, 1996: 69.
participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency”.  

The following are principles that can be identified as the linchpin of the rule of law in modern democracy as captured by Tambuwal:

“Laws are made democratically and effectively exercised freely without let or hindrance
“That the independence of each arm of government under the doctrine of the separation of powers is preserved, respected and utilized as the major guiding principle of the public policy.
“That there is not only the independence of, but also the existence of an impartial judiciary.
“Social justice governs state-society relations; arbitrariness or excessive use of power is restrained by law and practiced by the state.
“Equality before the law and equal protection by it. This can be translated to mean non-discrimination and guarantee of the dignity and worth of the human persons”.  

Rule of law is a very important ideal that requires that government officials and citizens alike be bound by the law and it is, in fact, a major source of legitimating for governments in modern world. It has therefore been much clamoured at all levels of government, whether central or local government. Where the rule of law does not ‘rule or reign’ there will be arbitrariness, abuse of power and brazen travesty of democracy.

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10 Aminu Waziri Tambuwal op cit.
11 Ibidem p. 3.
12 According to Nwabueze, rule of law simply means that law rules or reigns. See Ben Nwabueze, How president Obasanjo subverted the rule of law and democracy, Ibadan, Gold Press Ltd, 2007 pp. 3-8.
Democracy and Rule of Law in Local Government Administration in Nigeria

The meaning of rule of law in the context of local government administration is that local governments should be autonomous tier of government equipped to perform its constitutional functions. It means that its ability to function as a level of government should not be inhibited by factors inherent in its creation or obtainable in its relationship with other arms of government. Thus a system where the rule of law thrives, the local government administrative system would be protected from domination by other arms of government, thereby sustaining a sound democratic system of local government administration.

Local government administration in Nigeria has had a challenged relationship with other arms of government against the backdrop of the rule of law. While there are constitutional provisions preserving the autonomy and perhaps autochthony of the local government councils, they are not protected in reality.

Local government administration as it is today in Nigeria is traceable to the British colonial rule but without the instant uniform mode it is administered today. Reforms were carried out in 1976 by the Federal Government of Nigeria to achieve the unification of local government administration in the country for the first time. These reforms made the local governments autonomous to operate properly in bringing government closer to the people.
It is of note that before the 1976 reforms, local governments were run through the ministry of local governments. But with these reforms, the local governments were now made a third tier of government with reforms in terms of the following:\(^{13}\):

a. Their functions
b. Their structures
c. Their financial resources
d. The place of traditional institutions
e. Law enforcement

Throughout the federation, the functions of the local governments have been unified as were later enshrined in the 1979 Constitution. In terms of structures, there was uniformity in the political as well as administrative structures of the local government all over the federation. Every local government was headed by an elected local government Chairman, while the administrative head was the secretary to the local government with several departments for administrative convenience. In terms of their financial resources, substantial sums of money were disbursed to the local governments.

During the 1976/77 financial year, the sum of N \(100,000,000.00\) was made available to the local governments. This would be the first time substantial amount of money was disbursed to local governments in Nigeria. Similarly in 1977/78 financial year, N \(300,000,000.00\) was released to local government, while in 1980 N \(278,000,000\) was released to local government.

In terms of the place of traditional institutions, traditional rulers were prevented from partisan politics. By the 1976 reforms it was expected that such exemption would preserve the honour and respect of the office. In terms of law enforcement, Police Committees made up of members of the Police force and the local populace and local government workers were set up to achieve cooperation between the Police and the local public.

**Local Government Reforms in Nigeria**

Local Government reforms refer to the improvements made to the local government. Reforms are the veritable instruments in the hands of past and present regimes in the country. Reforms are policies intended for use by making things happen rather than waiting for things to happen and then react to them indeed. Local governments today are different from what they were in pre-colonial period.

The local government reforms of 1950 – 1954 in East, West and Northern provinces, brought about the era of local administration. After the dissolution of local government councils, following the January 1967 coup in Nigeria, local affairs became directed by appointed rather than elected people. This situation continued with the military administration of Murtala Muhammed in 1976 which set up the Udoji Commission to review the structure of local governments to include uniformity of local

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14Kunle Awotokun *ibidem* p. 130.
government system in Nigeria. However, 1976 reforms paved way for possible interaction among the tiers of government, the federal, state and local governments. It also resulted in the “unified” government staffing of local government. It led to the joining together of all the government staff into a single unit, hence the Association of Local Government of Nigeria (ALGON).

The Dansuki Review Committee of 1984 is a twenty-man committee inaugurated in May 1984 in order to review the existing local government administration in Nigeria. This was a direct consequence of the failure to fully implement the guideline on the 1976 local government reform in Nigeria. Consequently, Alhaji Dansuki and colleagues received the Federal Government’s mandate to look into the existing structure of local governments, the functions of local governments and the financial resources of local governments. After due consideration of the terms of reference by the commission, it has made some findings upon which it based its recommendations. It therefore recommended the issuance of new guidelines for local government.


The 1976 local government reform has come to be identified as the reference point for any meaningful discussion of local government system as an avenue for participatory democracy.

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According to Alex Gboyega, the massive recommendations were presaged by the recommendations of the Public Service Review Commission of 1974. The 1974 Commission had reported two basic types of local administrations – the Councillor and Divisional systems. The Councillor system consists of representative council which takes decisions by majority vote while the Divisional Administration was a form of local administration run through decentralized machinery of the state government. Riding on the crest of numerous recommendations, the 1976 reform attempted to reduce the military junta’s perception of the best way to lay solid foundation for democratic rule. This was seen to be in consonance with the new regime of General Murtala Mohammed, having overthrown the government of General Gowon, noted for its lack of direction, it would be recalled that prior to the 1976 reform, while the Easter region (1950), Western region (1952) and Northern states (1968) took their turns in embracing the councillor system, Cross river, Rivers, East Central and Bendel States adopted the development (Divisional) local administration system.

The coming of the 1976 reform naturally terminated the divisional administrative system and replaced it with the local government administration. As noted by the duo of Adamolekun and Gboyega, what distinguishes the 1976 local government reform exercises in Nigeria is its formal and unequivocal recognition of local government as constituting a distinct level of government with definite boundaries, clearly stated functions and provisions for ensuring adequate human and financial resources. The highlights of the reform, according to Ola and Olowu, as set
The reform provided for a single-tier structure for each local government with a minimum population range of 150,000 to 800,000. There was no maximum limit.

- A maximum of 25 percent nominated membership structure, the rest were to be elected; the Chairman and at least two or three councillors, to be designated supervisory councillors were to be engaged full-time. The number of council members was pegged between 10 and 30 depending on population of the local areas.

- The role of traditional rulers was clearly spelt out, they were to serve in advisory capacity through the traditional councils.

- The provision for a steady financial base through grants; this comes in forms of federal and state grants.

- Provision for increased internally generated revenue. The Chief Executive of the council would be an officer of no less than Grade Level 13. In the same vein, other Heads of Department are expected to be on Grade Level 10 and above. This is to guarantee highly skilled workforce.

The 1976 comprehensive reforms were given practical application when in December 1976, nine of the nineteen States (Bendel, Imo, Benue, Rivers, Kwara, Lagos, Ogun, Ondo and Oyo States) conducted direct election into the councils, though the council elections were marred with
low turnout, it was generally agreed that it was a good beginning. The absence of partisan politicking was also addressed as part of the problems.


After the sack of the second republic by the military, a veritable opportunity for the deliberate neglect of the 1976 reforms and its pursuit was created. The military regime of Buhari and Idiagbon abolished the management committees of the Shagari administration. In their place, senior civil servants were appointed sole administrators. Expectedly, all the new local governments created between 1979 and 1983 were consigned into the dustbin of history. Five months into their tenure, the duo of General Buhari and Idiagbon set up a 21-man committee headed by Alhaji Ibrahim Dansuki. The Dansuki Committee was to develop the most suitable method of organizing local governments in the framework of the military administration; revise existing local government structures, financial resources and functions for better performance; review the accounting/management challenges facing local governments and the standardizing of the councils’ departments; and design a manpower development scheme for all cadres of local government with a bid to improving local government administration in the country.¹⁶

The Dansuki Committee report was submitted three months after inauguration; this was exactly a year before General Ibrahim Babangida took over. It took Babangida from August 1985 to March 1986 before a white paper on the Dansuki report was issued. In the white paper, the military government accepted the recommendation that the structure of local government introduced in 1976 should be retained. It endorsed the pruning of the local councils to the 1976 figure and proposed that a management committee should be set up to run the council. This was probably how far Babangida could go with the carryover of the initiatives of Buhari/Idiagbon regime.

The IBB years were underlined by political construction and reconstruction of government at the grassroots which have been subjected to whimsical political manipulation. The report of the 15-member political Bureau set up by the Babangida regime, which submitted its report in 1987 provided a basis for tinkering with the local governments system. Part of the political bureau report dealt with how to make the local governments agents of national development. From the 304 local governments inherited, Babangida created 149 new ones, thereby bringing the total to 453. Between May 1989 and now, the local government councils have risen in number to 774.

Local Government Administration and the 1999 Constitution (as Amended)

Nigeria is operating a three tier system of government, viz, the federal, state and local government administrative system. The 1999
Constitution (as amended) guarantees the existence of 768 Local Government Areas in Nigeria and empowers them to participate in economic planning and development of the local government area. Furthermore, the Constitution guarantees the financial autonomy of the Local governments. Section 162(3) provides that:

“Any amount standing to the credit of the Federation Account shall be distributed among the federal and State Governments and the Local Governments councils in each State on such terms and in such manner as may be prescribed by the National Assembly.”

The Constitution further provides protective mechanism for the disbursement of local government funding a manner that is aimed at protecting them from domination by the other arms of government. The following subsections under section 162 clarify this point:

(5) “The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the State for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.
(6) “Each State shall maintain a special account to be called "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 State.
(7) “Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.
(8) “The amount standing to the credit of local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State”.

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17 S. 3(6) and 7(3) 1999 Constitution (As Amended)
18 S. 162 (3) Ibidem.
19 S. 162 (5, 6, 7 and 8) Ibidem.
However in more than one ways, the 1999 Constitution seems to cripple the autonomy it sets out to vest on the local governments thereby stifling the prevalence of the rule of law and democracy in the administration of that tier of government by making it tied to the apron’s string of the state government. Section 7 provides that:

“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 9 of this constitution, ensure their existence under a law which provides for the establishment, structure, composition finance, and functions of such local councils”.  

The above provision has far-reaching implications. First, the laws that will guide the conduct of local governments in a state are to be made by the state governments through the state houses of Assembly. It is clearly known that considering the party system in Nigeria under which the majority party usually produces the governor of the state as well as the majority of members of the House of Assembly, proceedings in the Houses of Assembly are usually under the heavy influence of the state governor. As a result he has the means to determine which way he desires any legislative wind to blow. This indirectly brings the fate of the laws that will be made for the local governments in that state under the control of the governor of the state.

Secondly, the section vests the function on the government to determine the financial fate of the local government in the sense that by virtue of the section it is the function of the state government to provide for

20 S. 7 Ibidem.
the finance of the local governments under them. This section is strengthened by S.7(6)(b) which provides that:

“The House of Assembly shall make provisions for statutory allocation of public revenue to local government councils within the State”.

Thirdly, to further make the local government subservient to the whims and caprices of the state government, the 1999 Constitution under section 162 makes the state government the pouch where its local governments’ funds are deposited before the latter receives disbursements from the former. The section provides that:

“The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the State for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly”.

The result of the above is that the local governments have to depend on the discretion of the governor for it to have access to its fund. More often than not, local governments’ funds are held back indiscriminately by the state government for long periods. Many state governors in Nigeria have been alleged to divert local government funds. Recently, a local civil society group, Civil Societies Coalition for the Emancipation of Osun State (CSCEOS), dragged the state governor and some members of the Osun State administration to the Economic and Finance Crimes Commission (EFCC) over alleged diversion of local government funds. It is alleged that

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21 S.7(6)(b) Ibidem.
the state is one of the leading indebted states in the country with arrears of unpaid salaries of local government workers.\(^{23}\) Though the anti-graft body could not prefer criminal charges in the light of the constitutional immunity status of the sitting governor of the state, its investigation of these kinds of allegations against a sitting governors are the first of its kind in the country.

Fourthly, many state governments have hidden under the provision of section 7 above to delay the conduct of elections in the local governments in their states. The implication of this is that they keep receiving local government allocations and yet such monies are not expended on their primary purposes. Some even go to the extent of completely dissolving a local government council and replace it with caretaker committee to run the affairs of the state. This practice is in defiance of the pronouncement of the Supreme Court of Nigeria in the case of \textit{Eze v. Gov., Abia State}.\(^{24}\) In that case, the Court made it abundantly clear that section 7 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) imposes a duty on the Governor of a State to ensure that the system of Local Government continues unhindered.

\textit{“Accordingly, a Governor’s act of dissolving Local Government Councils and replacing them with Caretaker Committees amounts to the Governor acting on his whims and fancies, unknown to Nigerian laws, and clearly illegal. In other words, it is the duty of the Governor of a State to ensure the existence of Local Government Councils instead of being responsible for destroying them”}.\(^{25}\)

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\(^{24}\) (2014)14 NWLR, Part 1426 at 196.

\(^{25}\) \textit{Ibidem} p. 197.
Rethinking Local Government Administration in Nigeria

From the foregoing it can be gathered that apart from the well-known financial constraints, the constitution and state governments in Nigeria are the major impediment to effective local government administration in Nigeria. This is based on the fact that both the states and the 1999 constitutional provision deny local governments’ governance and developmental autonomy. The primary purpose of local governments is the development of rural communities as well as active grass root participation in governance. But with the current constitutional arrangement wherein local governments heavily depend on the state governments, this purpose is far from achieved.26

The implications of a dependent local government system are serious as it will become impractical for them to carry out their constitutional functions as enshrined in Section 1 of the Fourth Schedule to the 1999 Constitution (as amended). Any government arm, organ or institution whose functions are tied to the control of another will hardly realize it objective of creation. Local governments should have the power and authority to make decisions on their own with respect to all administrative matters, and most especially finances, recruitment and

discipline of staff, formulation and execution of policies, programmes and projects.\textsuperscript{27}

It is important for there to be a review of the constitution to lessen or completely avert the belligerent state encroachment. These encroachments are sometimes as serious as the undemocratic removal of democratically elected local government chairmen and replaced with unelected care-taker committees. This undesirable but common practice in some states in Nigeria has relegated to the background the utility of the local governments.

**Conclusion**

This paper has appraised local government system in Nigeria through the various phases of restructuring under different regimes. It highlighted some of the nagging problems of local government administration which all seem to stem from lack of autonomy. This paper largely blames this stratification on the constitution itself which has subsumed the functioning of the local government under the various states’ organs. The paper proffers an array of rationale for the vesting of autonomy on local government as same will grant them the vital ingredients of democracy and rule of law in carrying out their constitutional functions as enshrined in the Fourth Schedule of the 1999 Constitution (as amended).

Bibliography


Liversidge v Anderson (Appeal Cases, 1942: 206); Mohammed Oluyori and Other, 1996: 69.


