

Nigeria's Federalism and the Challenges of Local Government Creation: A Critical Analysis of Lagos State Local Government Creation Law

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Abstract

This study examines the complexities of Nigeria's federalism; dilemma of local government creation in Nigeria since 1999; the constitutional provisions for local government creation vis a vis the Lagos State local government creation law; the legality or otherwise of the state created local governments; and offers a permanent solution to legalizing the increasing and necessary demand for local government creation in Nigeria. The study utilized data collected from the Lagos State Ministry of Justice, local government officials, institutional perspectives of the National Union of Local Government Employees and Association of Local Governments of Nigeria and grassroots people through interviews to determine people's views on the quandary associated with local government creation in Nigeria. The findings of the study revealed that while the letters of the 1999 constitution create a constitutional pathway for local government creation, the spirit of the same constitution does not envisage the fulfilment of constitutional pathway for creation of local government by state actors. As a way out of this constitutional logjam, this study concludes the recourse to the 1989 constitutional provision for local government creation, and recommends the creation of a second tier of government solely by state government without recourse to the national assembly for consequential listing.

Keywords: Constitution, Decentralization, Democracy, Federalism, Local Council Development Areas, Local Government Councils and Local Government.

Introduction

The critical problems necessitating this study are the contradictions and complexities of Nigeria's federalism as it relates to local government creation in Lagos State. These contradictions and complexities are firmly rooted in the 1999 constitution of the Federal Republic of Nigeria (as amended) and have constituted a clog in the wheel of local government development and inimical to the practice of federalism in the country. Contemporary scholars of federalism and local government approached the study from the perspective of intergovernmental relationship among the tiers of federating units, however, this study emanates from the standpoint of normative federalism of which decentralization of power is its key element. The controversies surrounding the creation of Local Governments in Lagos State remains controversial and unresolved and presents broad light challenge to the supremacy of Nigeria's constitution, which is the fundamental basis of Nigeria's federalism which transcends intergovernmental relations.

Without prejudice to the necessity for the creation of additional local government councils by the Lagos State Government, the local government system operational in Lagos State is alien to the

1999 constitution of the Federal Republic of Nigeria (as amended). Having fulfilled provisions of Section 8 (3 & 4) on the creation of local governments, it is imperative and a matter of constitutional provision that the Section 8 (5) which requires an Act of the National Assembly to be passed to make consequential provision with respect to the names and headquarters of the States or Local Government Areas as provided in Section 3 of the 1999 constitution of the Federal Republic of Nigeria (as amended) and in Parts I and II of the First Schedule to this Constitution. What this implies is that the entirety of the Local Government System in Lagos State is in breach and unknown to the 1999 constitution of the Federal Republic of Nigeria (as amended).

Conceptual Clarifications

Federalism

Tocqueville's (as cited in Burgess, 2006, p.10) shrewd observations of people, ideas and events not only gave him an insight into the workings of democracy but they also enabled him to identify some of the cardinal features of federalism and federation. He believed that the republican form of government depended for its vitality and permanence upon the durability of the federal system and that the federalism in the federation – America's enduring social diversity – sprang directly from the local communities, townships and provincial assemblies. 'In America', as he put it, 'the township was organised before the county, the county before the States, the State before the Union'.

Federalism is a form of multilevel governance which shares sovereignty, and not just power, between governments within a single state. It is a constitutional device, presupposing a formal political agreement establishing both the levels of government and their spheres of authority. So, like the constitutions within which they are embedded, federations are always a deliberate creation, in such a system, legal sovereignty is shared between the federal (national) government and the constituents' subunits (often called states or provinces). The key point about a federal partnership is that neither tier can abolish the other. It is this protected position of the states, not the extent of their powers, which distinguishes federations from unitary governments. Multiple levels of government are integral to a federation, whereas in a unitary system, sovereignty resides solely with the center, with lower levels existing at its pleasure (Hague & Harrop, 2010).

Elaigwu (2013) notes that a federal system of government often arises from the desire of a people to form a union without necessarily losing their identities. Usually, it is a compromise solution in multinational states between two types of self-determination – the determination to maintain a supranational framework of government which guarantees security for all in the state-nation, on the one hand, and the self-determination of the component groups to retain their individual identities on the other. Basically therefore, federalism "satisfies the need for cooperation in some areas, coupled with a right to separate action in others. Only federalism fulfils the desire for unity where it coexists with a determination not to smother local identity and lower power. Essentially, according to Elaigwu, federalism provides for shared powers among levels, orders or tiers of government, while providing for self-rule or autonomy for sub national units.

However, for the purpose of this study, the working definition will be drawn extensively from Burgess (2017) terminological clarification of federalism. According to Burgess, federalism animates federation. It is the driving force of federation that is intended to protect, preserve and promote 'the politics of difference', that is, the formal, constitutional, legal and political recognition of and respect for diversity.

Local Government

The history of the concept of Local government is traced back to the beginning of civilization. The concept is as old as the history of individual countries. Although there arise differences about where and when exactly to attribute the beginning of this profound concept, one thing is certain though, that some form of local government was seen even in ancient administration of nations and community groups. Despite its long history, scholars have not agreed on a specific definition for the term local government. The idea of local government like many other associate terms – democracy, decentralisation, and governance - has been characterized contrastingly by various scholars. The issue of subsidiarity is mostly emphasised and generally seen as the root and basis for all local government concept - scholars all agree that local government is to bring administration very close to the ordinary individual in a particular locality.

The local government has been defined as “government by the popularly elected bodies charged with administrative and executive duties in matters concerning the inhabitants of Local government is universal, found in federal and unitary states alike. It is the lowest level of territorial organization within the state. Variously called communes, municipalities or parishes, local governments are “where the day-to-day activities of politics and government gets done” (Teune, 1995).

Danjibo (2004) averred that there “is an implicit definition derivable from the 1976 local government reform in Nigeria. That it regarded local government as the level of government at the local level through a representative council established to exercise specific powers within defined local territories. These powers should enable the council’s substantial control over local affairs, part of which is to have control over local finance to initiate and direct the provision of services to the local people. In this sense, a local government system is that which is run by the local people themselves”.

Dabin (2006) provides the most elementary, yet incisive clarification of local government when he referred to it as the grassroots government, where people should have the full impact of government, and good governance is best undertaken at the local level. Dabin indicated further that local government, as the fundamental and foundational level of government is local, because it is where the people are; it is not far removed from the people, as the state government and federal government which is slightly removed from the people.

Local government is where citizens meet the state. At their best, local administration express the virtues of limited scale. They can represent natural communities, remain accessible to their citizens, reinforce local identities, offer a practical education in politics, provide a recruiting ground to higher posts, serve as a first port of calls for citizens and distribute resources in the light of specialist knowledge (Hague & Harrop, 2010).

Fajobi (2010, p.1) defines local government as:

“a political authority under state for decentralizing political power and delegation of authority. He further stated that it is the administration under local committees to maintain law and order based on a range of social amenities and to encourage cooperation and participation of people at the grassroot to improve their living conditions. Local government is the primary government that touches people’s lives by responding to their needs”.

From the above definitions, it is clear that local governments are local entities, with defined territories, discretionary power, functions, responsibilities and, most importantly, autonomy. In principle, local governments are created with the expectation that its administrative and political officers will exert influence and control the decision-making process at the grass root level without interruptions from higher tiers of government. In practice, however, as evidenced in the Nigerian case, the local governments have been subjected to mere agents of the federal and state governments.

Empirical Review

No doubt the creation of more local governments means creation of more opportunities of bringing government closer to the rural people for participation in democratic activities in the area. Regrettably, the quest for creation of local governments by the state governments based on the provisions of the 1999 constitution resulted to the abuse of local government powers as a democratic institution. Several state governments acted on the provisions of Section 8 (3) of the 1999 constitution, which deals with the powers to create local governments, and created as many as they so desire. However, their immediate intension was to attract more revenue from the federation allocation through the newly created local governments, and not to enhance democratic participation in the area. This contradiction of intension resulted to conflict of supremacy between the state and federal governments on local government creation.

The central principle of the constitution on local government is the recognition of the state government's power over local government. These results from the fact that, under the division of powers, local government is not (except for the certain aspects of it) mentioned whether in the body of the constitution or in the legislative lists as being within federal competence; as a residual matter therefore, it lies within the exclusive authority of the state governments (Section 4(7) and Section 5(2)). Thus, the authority of a state government derives from the provision of the constitution requiring every state government to ensure the existence of democratically elected local government councils under a law which provides for their establishment, structure, composition, finance and functions (Section 7(1)). That provision is not a grant of power, far from that; it is a restriction on the way a state government is to exercise its power over local government. It assumes that a state government has power over local government under some other provisions of the constitution, i.e., as a residual matter under Section 4 (7) and Section 5(2).

However, the provision of Section 7 (1) is an explicit recognition that the power to establish local government, to define its structure, composition and functions belongs to the state governments. If local government is a function of the state government and only the state government has the constitutional power to establish local government and to define its structure and functions, it's clearly and necessarily follows that local government is not an independent third tier of government".

Nwabueze (as cited in Ayeni (Ed.), 2006, p. 14-30) argues powerfully that it is a misnomer and false claim to refer to the local government as a third tier of government as often is the case, except if it is:

“understood that a local government is only an agency of the state government. It is one of the agencies or bodies which, together with the primary organs - the governor, the house of assembly and the courts - make up the state government, but it is not completely independent of them”.

For example, there are no constitutional fetters on the power of the state house of assembly to prescribe the organizational structure of a local government in terms of the functionaries appropriate to it, e.g., chairman, deputy chairman, secretary, treasurer, supervisory councillors, etc., and to prescribe how many councillors should compose it and other councillors. These functionaries and their offices, qualifications and tenure are not established or prescribed by the constitution; they exist only by the law of the state government. As an existing law, regardless of the government (civilian or military) that enacted it, is deemed to be a federal or state law as its subject-matter is within exclusive federal or state competence under the division of powers. The local government (Basic Constitutional and Transition Provisions) Decree No. 63 of 1999 was a state law, and not a federal law.

No doubt the creation of more local governments means creation of more opportunities of bringing government closer to the rural people for participation in democratic activities in the area. Regrettably, the quest for creation of local governments by the state governments based on the provisions of the 1999 constitution resulted to the abuse of local government powers as a democratic institution. Among the state governments were Bayelsa, Ebonyi, Enugu, Lagos etc. The conflict resulted in Supreme Court case between Federal and Lagos State Governments on local government creation, and the court ruling on the matter.

Iwilade (as cited in Wilson, 2013. Pg. 141) holds that till date, despite the conflicting opinions on the Supreme Court ruling on the matter, the Supreme Court ruling still stands as follows:

“Unless the National Assembly enacts a consequential Amendment Act to list the additional 37 Lagos Local Council Development Areas (LCDAs) as Local government Areas under the 1999 constitution, Lagosians cannot validate the new Local Government Areas they have lawfully created.”

The implication on democracy is that Lagos and other state governments involved in the creation of local governments within the period reduced the newly created local government councils to mere development centres/councils in a clever move to circumvent the decision of the Supreme Court that declared them inchoate.

Theoretical Framework

This study is anchored of the political economy theory. Burgess’s political economy approach to the understanding of federal states is predicated upon the dynamic relationship between the changing structure of national, regional and local economies and the political system(s) in which they operate.

Clearly if federations are founded upon the principles of difference and diversity that engender the territorial dispersion of power in a variety of ways, it is important to examine precisely how the federal constitution and the political process relate to the nature and distribution of economic power and resources in the state.

Since the end of the Cold War, signalled by the collapse of the Soviet and East European communist regimes, it is perfectly reasonable to assume that our empirical focus is liberal democratic states in which constitutionalism and the rule of law are based upon the capitalist mode of production. Federations therefore are rooted in capitalism. There is still room for both Marxist and non-Marxist liberal analyses of political economy, but the dominant economic paradigm today remains the market model.

In one particular sense, the adoption of this kind of approach is quite revealing: it underscores capitalism as an economic ideology. Once we accept that capitalism is the economic base of federation, it logically follows that federations, in turn, are liberal democratic capitalist states based upon capitalist values, beliefs and goals. And if the primary purpose of capitalism is the accumulation of capital in its many forms, this conceptual lens must be riveted upon how far federal systems are structured and restructured to serve this overall objective. In this light, federations 'move and change' in a manner that reflects purpose, and since 'some form of federalism is always implicit in any given federation at any given time' we shall regard the purpose of capital accumulation identified here as essentially ideological. Federalism, then, is inherently ideological.

The political economy approach is useful for the way that it goes to the very heart of the relationship between economics and politics and enables us to focus sharply upon the way that federalism and federation function in order to principally maximize economic profitability and welfare in its broadest sense.

Accordingly, political debates and arguments about constitutional reform, fiscal federalism, regional resources and the division of powers that address the distribution of competences in federal states can be construed in terms of the nature of economic power and the relations between government(s) and key corporate actors. Viewed from this perspective, federalism and federation can be relegated to the conceptual status of dependent variables in social-science analysis. And federal systems become mere instruments of vested capitalist interests. However, it is important that we do not go too far in this direction. Political economy is not mere 'economic determinism'. We must not disregard the force of human agency and the relative autonomy of political and cultural life.

Clements (as cited in Burgess, 2006, p.145) definition of political economy is apt here:

“While the economic provides the context, it is the political and the cultural/ ideological that writes the text of history, the particularities of each nation, and the possibilities for the future. The script is one in which human actors have significant freedom of action”.

Justification for the Establishment of Local Government System

The reason for the location of government at the capital city of the country (or State) is because there are some issues with which it deals that are essentially issues of overall national concern (Nwabueze, 1993). Because these issues are of national concern, the inhabitants at the local communities are removed from their discussions but are represented by their various elected representatives at the national level or the state level. Nonetheless, there remain such other issues which the national or the state governments cannot easily handle but are central to the local communities to address. Hence the need to form government at the local level becomes imperative.

Mowoe (as cited in Otiwe, 2018, p.19) captures this need accurately when she said that

“local governments have become a necessity because, despite the extent

to which the modern governments have been able to widen their scale of operations, there are still certain needs which are of direct concern to the particular localities and are best dealt with locally”.

The need to inject nations with good governance on the platform of democracy can best be actualized when such practice begins at the local level. This is because “for democracy to be viable, it must be rooted in the local communities, it must involve the local people in order to be able to grow and flourish” (Nwabueze, 1993).

Hence one of the objectives of local government is that it provides for democratic and accountable government for the local communities (Adebisi, 2012).

From the foregoing, it is not in doubt that the establishment of local government will enable the Federal and State governments to push developments to the local communities through their various agents (Awolowo, 1966). It is upon this realization that the 1979 and 1999 Constitutions of Nigeria provide in their pari material Section 7(3) that it is the “duty of a local government within the State to participate in the economic planning and development of the area” (S.8 of the 1989 CFRN). That is; the “area” within the territory of the local government.

Criteria for the Creation of New Local Government Areas in Nigeria’s 1979, 1989 and 1999 Constitutions

Inherent constitutional challenges as well as the prospects for the creation of new local government under the Nigerian Constitutions will be interrogated in this study. The reason for dabbling into cross examinations of the 1979 and 1989 Constitutions is that they are the very basis upon which the foundation of the current 1999 Constitution was laid particularly with regards to the establishment of local government system and the constitutional power for its creation. The reforms under the 1989 and the 1999 Constitutions on the constitutional powers and procedures for the creation of new local government areas are on the realization of the inherent weakness of the constitutional foundation and the contradictions created by the 1979 Constitution (Abdulhamid & Chima, 2015 as cited in Otiwe, 2018, p. 19).

Creation of New Local Governments Areas under the 1979 Constitution

In establishing the local government system under the 1979 constitution, Section 7(1) of the constitution provides that the government of every State is to ensure the existence of “democratically elected local government councils” by the law of the State “which provides for the establishment, structure, composition, finance and functions of such councils”. Ensuring State exercises power over the local government, Section 7(2) provides that “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; and
- 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 and
 - iii. administrative convenience

From the foregoing provisions, reading in community with Section 3(2) of the constitution which provides that “each State of Nigeria named in the First Column of Part I of the First Schedule to this constitution shall consist of the area shown opposite thereto in the Second Column of the Schedule”, it is obvious that this provision expressly provides the names and the number of local government areas and directs the State governments to ensure their existence under their various enacted laws. “The provision of Section 7(2) of the constitution equally assumes the extent the power of the state house of assembly to prescribe the area of authority of a local government or to delegate the power to some functionary of the State governments provided that the prescription conforms to the directives (Nwabueze, 1983). Although the constitution was silent on the constitutional procedures for the creation of additional local governments under the constitution, relying on the above provision of Section 7(2), the Lagos State House of Assembly vested the Governor under the Local Government Law 1980 to delimit the areas of authority of local government councils in the State. learned scholar (Nwabueze, 1983) argues that while the “standard of action” renders delegation of legislative power unconstitutional, it seems clear on the authority of the American decision on the point that the standards need not be set out in the statute itself as they can be gathered from the legislative programme (*Panama Refining Co. v. Ryan*, 1935). That is to say, by the community reading of Section 7(2) of the constitution and the local government Law 1980 of Lagos State, the standard was set. The decision in *Balogun's* case is also in conflict with the Privy Council decision (*R v. Burah*, 1878) wherein the Council held that “the Council of Governor-General was a Supreme Legislature with plenary powers and entitled to transfer certain powers to the provincial executive. Law passed by the subordinate executive authority on the basis of such transfer of power were held to be valid (Pyke, 2013). It follows therefore from the above that if the State legislature has authority to make law which the constitution did not contemplate the manner of exercising the authority, to exercise “plenary and ample power” means the State legislature is at liberty and constitutionally independent to delegate such power subject to the laid down rules and standards (Pyke, 2018). It is contended that because the constitution in Section 3(2) expressly states the names and number of the local government under the constitution, the state creation of additional (new) local government areas different from those named in the constitution will be unconstitutional (Igwebike, 1986, as cited in Otiwe, 2018, p.21).

In observance of this, Nwabueze (as cited in Otiwe, 2018, p.20) said;

“It is contended on the other hand that a state government has no power at all to create local government areas. The reasoning behind this is that since the areas of each state are defined in the constitution by reference to named local areas, the creation of local government areas necessarily involves a constitutional amendment by means of legislative enactment by the national assembly, with the resolution of the houses of assembly of not less than two-thirds of all the states”.

Creation of New Local Governments Areas under the 1989 Constitution

The constitution did not operate in whole before the military truncated it and that no controversy arose as to which authority was competent enough to create additional local government areas unlike in the 1979 constitution where the latter was silent on the issue. Just like the 1979 constitution, the system of local government councils was guaranteed under the 1989 constitution with named 448 local government areas by virtue of Section 7(1) and (2) of the constitution. Under Subsection (3) of Section 7, the government of every State is vested with the power to create not

more than 7 development areas out of any local government by the law of the State which shall provide for the “establishment, structure, composition, financial and functions of the development areas”. This means the development areas shall be the lowest administrative units within the State and their creation does not affect the status of the local governments recognised by the constitution. In effect, the 1989 Constitution empowers the national assembly to create new local government areas by a bill for an act of the national assembly in that respect supported by at least two-thirds majority of the members representing the area demanding for the creation of the new local government in the senate, house of representative and the house of assembly of the state demanding it together with the local government councils in the respect of the area. This request to create the new local government is thereafter subjected to a referendum by the acceptance of two-thirds of the people where the demand for the proposed local government area originated. If the result of the referendum is approved by two-thirds of the members of each house of the national assembly, new local government is therefore created under the constitution (S.9(3) of the constitution). Nevertheless, the national assembly is required to pass an act to make consequential provisions for updating the names and headquarters of the new local government area(s) in Section 3 and in Part I of the first schedule to the constitution (S.9(5) of the constitution). The constitutional amendment in this regard does not require the resolution of the State Houses of Assembly. Only the National Assembly which creates the local governments is required to amend the constitution for that purpose (S.10(2) of the constitution). It is contended that the national assembly will not hesitate to make the consequential provisions for the law validly made by it. This can easily be done without legal controversy.

Creation of New Local Governments Areas under the 1999 Constitution

Unlike the 1989 Constitution which provides for development areas to be created by the states making two tiers of local governments, under the 1999 constitution, Nigeria has a single-tier system of local government in style of the 1979 Constitution (Adebisi, 2012). In establishing the system of local government, the provisions of Section 7 of 1999 constitution are in pari material with Section 7 of 1979 constitution. The power to create new local government areas under the 1999 constitution is vested in the state by virtue of Section 8 that provides;

Subsection (3) a bill for the law of a house of assembly for the purpose of creating a new local government shall only be passed if;

- a. a request supported by at least two-thirds majority of members (representing the area) in each of the following, namely
 - i. the house of assembly in respect of the area, and
 - 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 all the local government councils in the state; and the result of the referendum is approved by a resolution passed by two-thirds majority of members of the house of assembly.

After complying with the constitutional procedures for the creation of new local government areas in the state, it requires that because the number, names and headquarters of local government areas in the state are fixed in the constitution, the creation of new local government areas will affect other provisions in the constitution. For this reason, the constitution requires the national assembly to pass an act reconciling any such new development with the existing provisions that may be affected (Aguda, 2000, as cited in Otiwe, 2018, p.23).

Consequently, in order to enable the national assembly to exercise the power conferred upon it to ensure the existence of the newly created local government areas, the state is to make adequate returns to the national assembly to enable the latter exercise its investigative power and thus pass the consequential provisions (Akande, 2004, S.88 of the 1999 CFRN). This Consequential Act is necessary merely for the purpose of amending Section 3 and the Second Column of Part I to the constitution wherein the particulars of existing local government areas are contained (Leigh, 2009). The national assembly can neither add nor detract from any of the local government areas created by the state. It is submitted that only the national assembly can amend Section 3, Part I of the constitution through consequential act. However, the failure of the national assembly to exercise this power has held the local government areas created by the valid law of a state as inoperative. This has been identified as one of the impediments to the creation of new local government areas under the 1999 constitution.

Attorney General of Lagos State vs. the Attorney-General of the Federation, 2004

The dispute between the parties in this suit arose from circular letter addressed to all the governors of the states and all the local government chairmen in the states by the Minister of State in the Federal Ministry of Finance. The circular letter titled: RE: Local Government Elections and Allocation of Funds from the Federation Account to LGAs, drew the attention to a letter from Mr. President in which he raised some constitutional issues concerning the allocations to Local Government Councils from the Federation Account. President Olusegun Obasanjo observed amongst others that:

“While State Houses of Assembly are empowered by the 1999 Constitution to create new Local Government Areas, the National Assembly, is however, required under Section 8 (5) of the Constitution, to make consequential provisions by an Act with respect to the names and Headquarters of the new Local Government Areas for any such new Local Government to have constitutional recognition” and therefore, ordered that “as the National Assembly is yet to make the necessary consequential provisions in respect of any of the newly created Local Government Areas in the country, conducting election under or funding any of them from the Federation Account would clearly be a violation of the constitution. Consequently, no allocation from the Federation Account should henceforth be released to the Local Government Councils of the above-mentioned States and any other State that may fall into that category, until they revert to their constituent Local Government Areas specified in Part I of the First Schedule to the Constitution”. (nigeria-law.org/LawReporting. p.2)

On April 19, 2004 the plaintiff took out an originating summons on behalf of the Government of Lagos State in which he asked for reliefs against the defendant, as representative of the Federal Government. In the claim by the Plaintiff – the Supreme Court granted amongst other reliefs the following:

Relief No.1

The president has no power vested in him (by executive or administrative action) to suspend or withhold for any period whatsoever the statutory allocation due and payable to Lagos State Government pursuant to the provision of section 162 (5) of the 1999 Constitution but in respect of the 20 Local Government Areas for the time being provided by section 3 subsection (6) of the Constitution and not the new Local Government Areas created which are not yet operative.

In the counter -claim by the defendants, the court granted the following reliefs: -

Relief No. 6

The 57 Local Government Areas established by Law No. 5 are inchoate until the National Assembly passes the Act necessary under section 8(3) of the Constitution. Therefore, the new 57 Local Government Councils are not entitled to receive fund from the Federation Account. Accordingly, the declaration sought is granted.

Relief No. 9

The order to restrain the Lagos State Government, the Lagos State House of Assembly or any functionaries or agencies of the plaintiff not to maintain, finance and recognise any Local Government in Lagos State apart from those created under Part 1 of the First Schedule of the 1999 Constitution is vague since the National Assembly could at any time it deems fit exercise its powers under Section 8(5) of the Constitution to amend section 3(6) and Part 1 of the First Schedule to the Constitution. Therefore, the order cannot be granted and it is hereby refused.

The court ruled that “the sum up the plaintiff’s action succeeds, all the reliefs sought are granted but applicable only to the 20 Local Government Areas specified in Part 1 of the first Schedule to the Constitution. The counter-claim by the defendant succeeds in part. Reliefs Nos. 3 (as modified), 4 and 6 are granted while reliefs Nos. 1,2,5,7, 8 and 9 are refused. (Attorney-General of Lagos State V Attorney-General of the Federation,2004)

Creation of Local Governments under Lagos State Laws

The Lagos State House of Assembly 2004 created fifty-seven (57) local government areas under the Creation of Local Government Law No. 5, 2002 of Lagos State and even conducted elections into them. The action was challenged in court in the case of Attorney-General of Lagos State vs Attorney-General of the Federation. As a result, the Government of Lagos State amended the local government law and changed the names of the local government areas to Local Council Development Areas. Chapter C16 of the Creation of Local Government Law 2005 (ii) states that “all other Local Government Areas listed in Schedule II of the Amendment Law shall for the time being operate as Local Council Development Areas...”

Presently, in Lagos State, there are 20 Local Government Areas recognized under the Constitution and 37 Local Council Development Areas not recognized by the Constitution. These are presented in Table 1. On the left column are the names of Local Government Areas created pursuant to Section 3 (6) as shown in the second column of councils as shown in part II of the First Schedule

to the 1999 constitution of the Federal Republic of Nigeria (as amended). On the right column are the names of Local Council Development Areas created pursuant to Creation of Local government Areas Law, 2002 (2004 No 15 and 2005 No 5(ii)) and listed in Schedule II).

Table 1. Names of Local Government Councils and Development Areas in Lagos State

S/N	Local Government Councils	S/N	Local Council Development Areas
1	Agege	1	Agbado/Oke-Odo
2	Ajeromi-Ifelodun	2	Agboyi-Ketu
3	Alimosho	3	Apapa Iganmu
4	Amuwo-Odofin	4	Ayobo-Ipaja
5	Apapa	5	Badagry West
6	Badagry	6	Bariga
7	Epe	7	Coker Aguda
8	Eti-Osa	8	Egbe-Idimu
9	Ibeju-Lekki	9	Ejigbo
10	Ifako/Ijaiye	10	Eredo
11	Ikeja	11	Eti-Osa East
12	Ikorodu	12	Iba
13	Kosofe	13	Ifelodun
14	Lagos Island	14	Igando-Ikotun
15	Lagos Mainland	15	Igbogbo-Baiyeku
16	Mushin	16	Ijede
17	Ojo	17	Ikorodu-North
18	Shomolu	18	Ikorodu West
19	Oshodi/Isolo	19	Ikosi-Ejinrin
20	Surulere	20	Ikosi-Isheri
		21	Ikoyi Obalende
		22	Imota
		23	Iru-Victoria Island
		24	Isolo
		25	Itire-Ikate
		26	Lagos Island West
		27	Lekki
		28	Mosan-Okunola
		29	Ode-Olowo/Ojuwoye
		30	Ojodu
		31	Ojokoro
		32	Olorunda
		33	Onigbongbo
		34	Oriade
		35	Orile-Agege
		36	Otto-Awori
		37	Yaba

Source: Creation of Local Government Laws of Lagos State 2015.

Constitutionality of Local Council Development Areas (LCDA) in Nigeria

Oladele (2020) argues that although the State Government has constitutional powers to create Local Government Areas, it does not have the power to create local council development areas. This is because local council development areas are not listed in the constitution of Nigeria.

Local council development areas are administrative bodies created by the house of assembly of a state but are not listed in the constitution of the Federal Republic of Nigeria. They are created under the law of a State in the same manner as local government areas are created but unlike local government areas that are listed in the constitution, local council development areas are not. Creation of local government areas in Nigeria is governed by the provisions of the constitution of Nigeria.

The houses of assembly of Lagos and Oyo State created local council development areas while the houses of assembly of Ebonyi and Nasarawa States created development areas. These states' legislative houses created local council development areas and development areas without any constitutional power to do so. Section 8(3) of the constitution only gives a state house of assembly the power to create local government areas and not local council development areas or development areas.

Result of the Findings

This study reveals that in the Laws of Lagos State Government 2015: (1) Creation of Local Government Law 2002 captured in Chapter C16 provided for the creation of New Local Government Areas in Lagos State. The Law established in Lagos State of Nigeria an additional 37 Local Government Areas, which are set out in Schedule II to this Law.

Chapter C16, 2004 Law No. 15 (2) states as follows:

The additional Local Governments Areas listed in Schedule II to this Law are inchoate until such time as the National Assembly shall pass an Act to make consequential provisions with respect to the names of the said additional Local Government Areas as provided for under section 8(5) of the 1999 Constitution of the Federal Republic of Nigeria”

The Laws of Lagos State Government, 2015, still under analysis, in 2005 No.5 stated in Chapter C16: (2) Local Government Areas Part I, Schedule I, No. 24 Law 1999 states as follows:

(1) Pending the consequential Act of the National Assembly referred to in section 1(2) of this Law:

- (i) the Local Government Areas for the time being listed in Part 1 of Schedule 1 of the Amended Law remains valid and in existence;
- (ii) all other Local Government Areas listed in Schedule II of the Amendment Law shall for the time being operate as Local Council Development Areas, **the funding of which shall be borne by the State Government.**

Basically, Creation of Local Government Law Chapter C16, Section 2 (1) (ii) that states Local Governments created by the State for the time being (i.e., until listed in the relevant section of the constitution) operate as Local Council Development Areas, the funding of which shall be borne by the State Government.

Part VI, Section 48 (1) (a & b) Allocation of Revenue to Local Government which states that the state will: maintain a special account to be called "State Joint Local Government Account" into which will be paid all allocations to the Local Government of the State from the Federation Account and from the Government of the State; and pay to each Local government such proportion of the total revenue in such manner as maybe prescribed by the House of Assembly of the State.

Section 48 (2) cleverly states that: the amount standing to the credit of the Local Governments will be distributed among the Local Governments of the State in such manner as maybe prescribed by the House of Assembly of the State. This is a complete negation of the 1999 constitution of the Federal Republic of Nigeria (as amended), as section 162 (5) provides that "the amount standing to the credit of the local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly". This provision is explicitly clear, 'the terms and manner as may be prescribed by the National Assembly' it did not mention the State House of Assembly, and it is reinforced by section 1 (3) of the same constitution that states "if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void".

This study shows that the Lagos State Government is in breach of its own laws, as funding of the Local Council Development Areas (LCDA) is taken from the constitutionally listed local government councils and shared in an opaque manner and formula not known to law which the LCDA's created form part of it. Data generated by this study, both qualitative and quantitative indicate that the Lagos State Government since 2007, has been funding the LCDA's from the share of the constitutionally listed local government areas. It is instructive to note that this study reveals that in 2015, only seven local governments received grants from the Lagos State Government. Of the total revenue of Local Governments which stood at 27,295,077,043.83, (Twenty-Seven Billion, Two Hundred and Ninety-Five Million, Seventy-Seven Thousand, Forty-Three Naira and Eighty-Three Kobo), only meagre 20,128,578.83 (Twenty-Million, One Hundred and Twenty-Eight Thousand, Five Hundred and Seventy-Eight Naira and Eighty-Three Kobo) was given out as grant to local government in conformity with section on funding of local government as prescribed in the 1999 constitution of the Federal Republic of Nigeria (as amended). This pittance is a negation of the constitution and adversely affects the capacity of local government to provide development to the grassroot population.

Conclusion

This study has examined Nigeria's Federalism and the Challenges of Local Government Creation using the case of Lagos State Local Government Creation Law. The findings of the study reveal that data garnered from this study is unanimous and supports the need and propriety for Lagos State to have more local government councils created because it meets all the conditions set out in Section 8 (3-4) 1999 constitution of the Federal Republic of Nigeria (as amended) and the criteria for local government creation as stated in 2.2.6.3 of this study. The problem, however, is the inability of the Lagos State Government since 2004 to the time of this study to fulfil Section 8 (5-6) of 1999 constitution of the Federal Republic of Nigeria (as amended). This is the crux of the findings; the silence and conspiracy of the political class in Lagos State to entrench an illegality on the local government system in flagrant breach of Section 8 (5-6) of the 1999 constitution of the Federal Republic of Nigeria (as amended), and the supreme court decision in Attorney General of Lagos vs Attorney General of the Federation (2004) declaring the local government inchoate.

With the chaotic situation in the local government council system in Lagos State, wherein Section 3 (6) the 1999 constitution of the Federal Republic of Nigeria (as amended), only 20 (twenty) local government areas are recognized as part of the 768 (seven hundred and sixty eight) local government areas listed in Part I, First Schedule to the 1999 constitution of the Federal Republic of Nigeria (as amended), this study finds the entire local government system in Lagos State to be operating on an illegal foundation. The informed views of Oladele (2020) and the sentiments by interviewees and respondents support this conclusion.

In the absence of law there is no offense, but when there is a constitutional provision and a Supreme Court judgement describing a process in strong words inchoate, no matter the emotions attached to the issue or subject, the law, the constitution must take precedence. Encarta dictionary search of the word “inchoate” reveals it to mean the following: either just beginning to develop, imperfectly formed- partly formed or chaotic-lacking structure, order, or organization. This is the unfortunate state of local governments in Lagos State.

Recommendations

Based on the findings of the study, the following recommendations are made;

- i. Since it is almost impossible for the National Assembly to give consequential listing to any local government created by State governments, and to prevent further subversion of the constitution by state governments, it recommended that subsection (3) of Section 7, of the 1989 Constitution be incorporated into the 1999 Constitution by way of amendment. By this, government of every State is vested with the power to create not more than 7 Development Areas out of any local government by the law of the State which shall provide for the “establishment, structure, composition, financial and functions of the Development Areas”. This means the Development Areas shall be the lowest administrative units within the State and their creation does not affect the status of the local governments recognised by the constitution.
- ii. That Nigeria’s constitution be further amended to strengthen its federal nature and character, with specific reference to the status of local government. The amendment should make clear if Nigeria is a dual or tri federation, and if the latter is the case, the powers of State over local government be totally stated and Section 3(6) expunged from the constitution, if the former is the case, the local government be made to share in the executive powers of the federation as stated in Section 5 of the 1999 constitution of the Federal Republic of Nigeria (as amended) in likewise manner as the President and State Governors.

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