

# Federalism, Constitutionalism, and Local Government Autonomy in Nigeria

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## Abstract

Many studies that have attempted to address the problem of poor performance of local governments in Nigeria offer various reasons including the issue of lack of democracy and autonomy. Yet constitutionalisation of local government or the so called third tier status of local government is meant to at least solve the problem of democracy and autonomy. Extant studies have largely failed to probe why state governments persistently failed to respect constitutional provisions on local government autonomy. This study therefore investigates the reason for the divergence between constitutionalisation of local government and the actual practice. The research finds that the constitutionalisation of local government in Nigeria masks the subtle contest for control of the local government system by the federal and state governments. In other words, the major reason that determines the actual practice of local government in Nigeria has to do with the centripetal federal and centrifugal state forces in the ongoing process of defining the Nigerian federalism. The objective of the study is to show that the unwillingness of most state governments to adhere to the constitutional provisions on establishing democratically elected, freestanding Councils is a fundamental problem about defining Nigeria's federalism.

**Keywords:** federalism; constitutionalisation of local government; local democracy, local government autonomy, state-federal relations; intergovernmental relations; Nigeria.

## 1. Introduction

It is rather paradoxical that the foundation for a democratic, freestanding, autonomous local government system in the Nigerian federation was laid by the Military, a form of government usually noted for undemocratic rule. While the various Military governments in Nigeria were accused of distorting the federal balance in favour of the central government (centralization), it is ironical that most of these Military regimes gave considerable attention to decentralisation through local governments, local democracy and autonomy. Before the issuance of 1976 Local Government Reform Guidelines, a reform generally acknowledged to be the legal foundation for the so-called third tier status of local government in Nigeria, local government control had been state-dominated. Though the three pre-Independence federating units in Nigeria – the three Regions – had desired from the 1950s to establish democratic local governments, it is generally agreed that these Regions had strong grip on the control of local governments for varying political reasons (Adeyemo, 2005). This practice of Regional dominance was inherited by the states after subsequent state creation exercises in 1963, 1967, 1975, 1976, 1991 and 1996.

The 1976 reforms was aimed at creating a uniform practice of local government in the federating units, and, more importantly sought to sever “the extra strong controlling hands of the state governments on local governments” (Ademolekun, 1979:3). Commenting on the objectives of the reforms, Ademolekun (1979:3) remarked that “what distinguished the 1976 reforms from all previous reform exercises in the country is the formal and unequivocal recognition of local government as constituting a distinct level of government with defined boundaries, clearly stated functions and provisions for ensuring adequate human and financial resources.” The reform is seen as elevating the local government to the status of the third tier of government. The key points of this third tier status as noted by Asaju, (2010:102) are:

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

However, the extent of realizing these intentions, which was later transcribed into the 1979 Constitution and subsequent editions of the Nigerian Constitution, is generally agreed to be very low (Adeyemo, 2005; Ikeanyibe, 2008; Ighodalo, 2008; Asaju, 2010; Oviasuyi, Idada and Isiraojie, 2010). These studies provide various reasons for the poor

performance of the local governments in Nigeria, including the reasons of lack of autonomy and democracy. Oviasuyi, Idada and Isiraojie, (2010) for instance, underscore issues of corruption, lack of financial and human capacity, constitutional inadequacies, confusion and complexities. Adeyemo (2005) points to the challenge of conflicting constitutional provisions, political instability and financial/fiscal problems. Ikeanyibe (2008) observes that the constitutional recognition or the third tier status leads to inflexibility that constrains dynamism and adaptability necessary for effective local government; Ojo (2009) points to the problem of poor management and corruption. Most of these studies also underscore the issue of lack of autonomy and local democracy. For instance, Odo (2014:210) asserts that "the local governments suffer from constant whittling down of their powers by the state governments. The excessive control of some local governments by the states has reduced them to local administration or local arms of state administration."

Despite the merits of these studies, it is apparent that the root causes for the persistent abuse of the Constitutional provisions by most state governments over the years, have not been properly conceptualised. Roberts (1999) remarks that from the viewpoint of constitutional jurisprudence, the important issue is the extent to which constitutional provisions will enhance Intergovernmental Relations within the framework of federalism. Hence, constitutional provision is one thing, and compliance to it is another. The main research problem for this study is therefore to investigate the major reason for the divergence between the constitutionalisation of local government autonomy and democracy, and the actual practice in Nigeria. The objective of the study is to show that the unwillingness of most state governments to adhere to the constitutional provisions on establishing democratically elected freestanding Councils is a fundamental issue about defining Nigeria's federalism. The study suggests that among the major reasons for the failure of states to respect the constitutional provisions on the establishment of local governments is the disposition of state politicians to accrue more powers for the states at the expense of the centralizing tendencies of the federalists.

The study is based on survey and documentary data sources. Empirical data were sourced through surveys conducted through extensive interviews in Anambra State, one of the thirty six states in Nigeria. People interviewed included present and past officials of Anambra State Independent Electoral Commission, officials of Anambra State Ministry of Local Government and Chieftaincy Matters, the Local Government Service Commission and the Ministry of Finance; present and past local government officials and political party leaders in the local governments. Survey could only be restricted to one state on account of available resources. However, survey data were supported with information available in official documents, reports, and other secondary data on the practice of local government administration in Nigeria. Indeed, we are confident that the delimitation of the survey to one state have not seriously undermined the validity of the findings since evidence from literature and documentary sources shows strong replication of the situation in Anambra and many other States.

## **2. Models of Federalism: Power Allocation and Intergovernmental Relations**

Despite so much discussion on the concept of federalism, there is no settled common denominator (Gamper, 2005). Part of the difficulty in conceptualising federalism is the existence of variety of political arrangements today described as such. It has become a valued governmental structure to achieve multiple objectives within polities. Those who value a federal system today do so for some mix of three prominent reasons: i) it encourages efficient allocation of national resources, ii) fosters political participation and a sense of democratic community and, iii) helps to protect basic freedoms and liberties (Inman and Rubinfeld, 1997: 44).

Seeking to realize these key objectives has moved the concept of federalism further from the classic idea of power sharing between two levels of government (Wheare, 1947; Dicey, 1959) – the associating states, and the newly formed state - to the idea of federalism as arrangements that include local governments in the distribution of political power or what has come to be popularly known as three-tier federal structure. Steytler (2005: 1) documents that

*The first federal constitutions of the modern era did not include local government as an order of government. The Constitution of the United States of 1787 was silent on the matter, as was the Swiss Constitution of 1848. In the Canadian Constitution of 1867, local government was mentioned only as a provincial field of competence. The Australian Federal Constitution of 1901, being silent on the matter, had the same effect – making local government a creature of state power.*

Gibson (2004:2) observes that 'federalization' today has meant a process of political decentralization that has given greater protagonism to sub-national governments and has redistributed power and resources between levels of government. The relevant question remains whether the local government level can be equal partner as units in a federal contract? How does the status of local government as third tier government affect the power relations between the union

government and the middle tier federating units?

Some scholars, (e.g. Gamper, (2005), believe that municipalities cannot generally become equal "third" partners within the federal system despite the fact that they are very much affected by the federal operative system such as the impetus for fiscal distribution. One obvious reason given by Gamper for his conviction is that they usually do not partake in legislative power-sharing which is essential to the policy-making power of the constituent units of a federal system. Ayeni (1994) also remarks that three-tier federalism is impossible to define in a consistent manner. He proceeds from this to argue that its utility in Nigerian federal structure has been to centralize the Nigerian state rather than in furthering the idea of local governance.

Basically, two fundamental classifications can be made of various theories of federalism, viz the institutional or constitutional (dualistic theories) and the integrative (monistic theories) (Akindele and Olaopa, 2003). The institutional/constitutional theorists believe that federalism depicts a form of government that embodies certain institutional and constitutional features. A variant of this group of theories perceives federalism as nothing but a bargain. It is purely a legalistic and political conceptualisation of federalism. Among scholars in this class are pioneer theorists like K.C Wheare who is regarded as the father of modern federalism and Elazar (1987:4) who conceptualises federalism as a covenant in which the constituent units are equals 'who come together freely and retain their respective integrities even as they are bound in a common whole'. Wheare (1964) has conceived a number of principles which define a federation.

These are:

- The division of governmental responsibilities between levels of government.
- A written constitution spelling out this division and from which federal and state authorities derive their powers.
- A judiciary independent of both levels of government that acts as an arbiter in cases where there are conflicts over the jurisdictions enumerated in (1) above.
- The federal arrangement emphasizing co-equal supremacy of the various levels each in its respective field of operation.
- the citizens of the federation being concurrently under two authorities and owing loyalties to them.

While the institutional theory does not expressly state it, it does presume that federations are usually made up of two levels, namely, the newly formed political entity and the various 'equal' units coming together to form the new political organisation. Hence, most scholars of this tradition often refer to two levels of government. This is why the model is often referred to as the dual model of federalism in which each level of government, national and state, is supreme within its sphere of influence; neither level is dominant and neither level should intervene in the affairs of the other (Rosenbloom and Kravchuk, 2002).

Thus, traditionally the constitutional or institutional theory recognises only two tiers of government in a federation. Even though the model underscores the importance of constitutionalisation, it is not obvious that local governments could be equal parties of the federating units, despite their constitutionalisation. At least their coequal supremacy in their respective field of operations is not guaranteed. For instance, in the Nigerian case, their existence are to be guaranteed by the laws of state government (Section 7, 1999 Constitution). Indeed most unitary states have as well started to enshrine provisions about the nature of local governments in the constitution. Thus while the idea of third tier status of local government emanate from the practice of including the powers and other features of the local government in the constitution, it has not been adequate to establish their autonomy as much as a federating unit.

The alternative theoretical bent in explaining federalism is the sociological model anchored on the diverse socio-political make-up of a country and the diversities within. It has variants in the process and functional models. The theory basically explains federalism as a tool or instrument for managing diversity and ensuring the self-expression or the autonomy of a unit that is sociologically different from others within a polity. The theory is regarded as monistic because the emphasis is not in dualistic sharing of powers but in recognition of diversities of any socio-political system. Among the foremost theorists of the sociological or monistic theory is Livingstone (1971) who explains federalism as a device by which the federal qualities of a society are articulated and protected. The federal qualities consist in various forms of diversity and multiple loyalties to which people of a federal state are prone to. Scholars in this category argue that federalism goes beyond the simple division of legislative powers or arrangement of institutions. Livingstone for instance avers that

*The essential nature of federalism is to be sought for not in the shading of legal and constitutional terminology but in the forces of economic, social, political and cultural (systems) that have made the outward forms of federalism necessary... The essence of federalism lies not in the institutional or constitutional structure, but in the society itself... A federal government is merely a device by which the federal qualities of society are articulated and protected (Livingstone, 1971:22)*

While paying attention to qualities that can make a country consider a federal arrangement, this model apparently fails to address the issue of tier system and the configuration in which the sociological qualities could be recognized in a federal structure. On the surface, one can adduce that Livingstone's conception does not contradict the essentials of the dualistic model, but rather emphasizes those factors (federal qualities of a society) that make power division inevitable. The federalizing procedure (legal or constitutional sharing of powers) advocated by the institutional or constitutional theorists therefore seems to be central to the idea of federalism.

However, Steytler (2005) observes that the practice of constitutionalisation of local government is a new phenomenon, beginning only after the Second War with Germany as the first country to do so in 1949. Nigeria's Second Republic constitution of 1979 recognized the local government as third tier level government, so has the 1999 constitution under which the present fourth democratic dispensation was initiated. Many countries today including both federal and unitary ones make constitutional provisions regarding the nature, functions and finance of local governments as a ploy to provide guaranteed autonomy and local power devolution that goes beyond the wishes or laws of higher level governments. But there is no end yet to scholarly debate on the value of this practice especially in federal systems.

### **3. Constitutional Framework for Democratic and Autonomous Local Government in Nigeria**

The 1976 Guidelines for Local Government Reforms was designed to end extensive experimentation with different theories and patterns of local government by various state governments (Gboyega, 2001). Ogunna (1996:146) underscores some of the significances of the reforms:

- i. It is the first time in the political history of Nigeria when the federal government initiated local government reform for all the state governments in Nigeria;
- ii. A uniform system was introduced for all the states of the federation;
- iii. Local governments started to be recognised as a third tier of government, with its attendant implications;
- iv. The articulation and institutionalisation of the nature of local government expected, including local democracy, number, names, functions, funding etc.
- v. Institutionalisation of statutory allocations to local governments.

Okoli (1998) describes the 1976 reform guidelines as the first bold attempt at realizing the national objective of unity and integration as envisaged by the federal government, which also hoped by so doing to protect the system from the states' stifling controls.

The provisions of 1976 reforms were transcribed into the 1979 Constitution used by the military to midwife the Second Democratic Republic (1979 to 1983) and thereafter retained in subsequent editions of 1989 and 1999. Some key provisions concerning the local government system as enshrined in the 1999 Constitution include:

- i. Establishment of democratically elected Local Government Councils (LGCs) in chapter one, Part II, Section 7.);
- ii. Provisions of a complex procedure for creating new local governments by both the State House of Assembly and the National Assembly (section 8:3;5;6:)
- iii. Provision of names of states and their local governments (Part I and II of the First Schedule) making it difficult to create local governments without constitutional amendments;
- iv. Provision of basic functions for the local governments in the Fourth Schedule
- v. Provision that Statutory Allocation from the Federation Account shall be made to the local government and details of how this should be made by the National Assembly through the State Joint Local Government Account (162: 3,5,6,)
- vi. Provision that each state shall pay to LGCs in its area of jurisdiction such proportions of its total revenue on such terms and in such manner as may be prescribed by the National Assembly (162:7);
- vii. Provision that amount standing to the credit of LGCs of a State shall be distributed among the LGCs on such terms and in such manner as may be prescribed by the House of Assembly of the State (162:8)

From the above, it can be observed that constitutional democratically elected LGCs and relative financial and administrative autonomy are provided for the local governments and protected in such a way that their existence, names, type of government to be established (democracy), funding and so on derive from the Constitution, rather than another level of government as Watt, (1996) stipulates that parties to a federal arrangements should. Nonetheless, the implication has been some kind of ambivalence in the control of local governments that manifests the underlying centripetal and centrifugal tensions between the federal and state forces in Nigerian federalism. For instance, while the constitution provides for the existence of "democratically elected local government", the onus of realising this lies with the state legislation since it provides that "the government of every state shall...ensure their existence under a law...." (Sect. 7).

Similarly, though states are empowered to create new local governments (Sect. 8,3), the National Assembly has to "make consequential provisions with respect to the names and headquarters of State or Local government areas as provided in section 3 of this Constitution and in Parts I and II of the First Schedule to this Constitution" (sect 8, 5). Thus in the case of creating new Local Governments by any state, the returns of such new local government should be made to the National Assembly and will necessarily lead to modification of the constitution.

Invariably, the constitutional provisions on local government clearly remove the local government system in Nigeria from being creations of the state governments. But this play has not led to the desired autonomy and local democracy. Therefore why has the problem of abuse and disregard of such provisions by many state governments over the years been persistent in Nigeria despite opportunities to either modify or strengthen the provisions in subsequent revisions of the Nigerian Constitution? Why has the fate of local governments as third tier, freestanding democratically constituted level of government been uncertain for 30 years since the 1976 reforms that introduced it, in spite of consistent retention in subsequent Constitutions of the country? The next section attempts to show that the constitutionalisation of local government in Nigeria has only increased competitiveness between the federal and state governments.

#### **4. Constitutionalisation and Divergence of Local Government Practice in Nigeria**

Disregarding constitutional provisions on establishing democratically elected councils and other guidelines on local government by the state governments has been a prominent feature of Nigeria's democracy following the 1976 Reforms. The Second Republic provided the laboratory for testing the provisions of the 1976 local government reform as transcribed in the 1979 Constitution. Asaju (2010: 105) describes Nigeria's Second Republic (1979 to 1983) as "a testing period in which the State and the Federal Government contested the control of Local Government Policy with each other." A clear evidence of this contest showed that "throughout the Second Republic no election was held into the Local Government Councils; only Sole Administrators were appointed" (Asaju, 2010: 105). Many of the states created local governments contrary to provisions that the bill creating local government should only be passed by the National Assembly. Allocations to local governments were cornered through the Joint Local Government Accounts, and states engaged in many other actions that subverted the autonomy of local governments. Obikeze and Obi, 2(004) describe the period as one in which the local governments were most neglected, abused, politicized and marginalized in the scheme of things in Nigeria. Indeed, State-Local relation constituted a major political turmoil that led to military takeover of government in December 1983. This was why the emergent Military Administration in the December 1983 coup d'etat, the Buhari-Idiagbon Military Junta, quickly set up the Ibrahim Dasuki Committee to look into the problems of local government administration and recommend solutions (Ibietan, 2011). The regime reversed most of the actions of state governments in the Second Republic such as creation of new local governments.

The succeeding Military Junta led by Ibrahim Badamasi Babangida (1985 to 1993) more significantly continued with finding new ways of taming state dominance in the control of local government. Ogunna (1996) documents the following actions of the Federal Military Government under General Ibrahim Babangida:

- i. Abolishment of State Ministries of Local Governments
- ii. Increase in the statutory allocations to local government from the Federation Account and from state internally generated revenue;
- iii. Introduction of the Presidential system of government with full separation of powers with elected chairman as the head of the executive arm and elected legislative council of as the legislature as the uniform practice for all local governments in the country
- iv. Direct allocation of due local government federal allocations to Local Government Councils rather than through State Local Government Joint Accounts.

Thus, the various Military governments in the country had towed the line of concretizing the third tier status of the local government. But concealed in this military paternalism for local democracy and autonomy was a more fundamental objective of tilting the power relations between the federal government and the federating units, which enables the federal government to appoint sole administrators to the local governments during military governments, conduct elections into the local governments during transitions, and roll out reforms of the system at will.

With the return to democratic rule in 1999, the contest between the federal and state government through outright neglect of constitutional provisions on local governments reemerged. Cases of arbitrary creation of local governments without following the procedure for getting the bill passed by the National Assembly, refusal to conduct elections into local government councils, appointing various types of nondemocratic councils, and tampering with the allocations of local governments, have become the convention rather than an exception. Lagos, Akwa Ibom, Bayelsa, Enugu Ebonyi and Kastina states for example, embarked on creating new local governments within the first four years of return to

democratic rule. The celebrated case of Lagos state creation of new local governments between 2002 and 2004, which led to the withholding of federation allocation to the state's local governments by the Obasanjo Administration in 2006 provides a typical example of the controversial nature of dealing with local governments by high level governments. In the ensuing conflict, the Federal government wished to exercise its power of control by withholding the Federal Allocations to Lagos State Governments in 2006 leading to a legal tussle between the Federal and Lagos State government over jurisdiction. In the judgment, which was made in favour of the federal government by seven Justices of the Supreme Court in the ratio of 5 to 2, the Court ruled that while the Lagos state House of Assembly has right to create new local governments in accordance with the provisions of section 7 (1) and 8 (5), the law remains inchoate until National Assembly fulfils its part. The lead judgment by Honourable Justice Uwais rules thus:

*I am satisfied that the House of Assembly of Lagos State has the right to pass the creation of Local Government area Law No.5 of 2002 and to amend it by passing the creation of Local Government Areas (Amendment) law 2004. What follows is that the laws enacted by Lagos state that is, Law No 5 of 2002 and the 2004 law are both valid laws since the House of Assembly of Lagos State has the power under section 4 subsections (6) and (7), 7 subsection (1) and 8 subsection (3) of the constitution to legislate in respect of the creation of new local government councils which are one and the same for the purpose of section 162 subsection (3) and (5) of the constitution. However, in the context of section 8 subsection (5) and section 3 subsection (6), such laws cannot be operative or have full effect until the National Assembly makes the necessary amendment to section 3 subsection (6) and Part 1 of the First Schedule to the Constitution. The effect of this is that the laws are valid but inchoate until the necessary steps as provided by the Constitution are taken by the National Assembly (cited in Eme, 2008:59).*

Further facts on the controversial nature of the provisions on local government can be seen in the operations of local governments in Anambra state for the great part of the Fourth Republic so far. The state did not conduct elections into the local governments after the initial one conducted under the military in 1998, whose tenure expired in 2002, to initiate the Fourth Republic until about 2013. Though the state has enacted a local government law in compliance to the provisions of the 1999 Constitution section 7 (1) that "states should guarantee the establishment of democratically elected local government", it systematically manipulated this basic law at various periods to avoid compliance to the Constitutional provisions at the expediency of the state political leaders. The Anambra State Local Government Law of 1999 (A Law to provide for the Establishment, Structure, Composition, Finance and Functions of Local Government Councils, and for related purposes) provides in part II section 4 (1) that 'the system of local government is by democratically elected government'. The law further provides in Part VI section 51 (1) as follows:

- i. There is established for each local government in the State, a Local Government Council;
- ii. The Council shall comprise of all the democratically elected councilors from the wards in the local government area;
- iii. A local government Council shall stand dissolved at the expiration of a period of three years commencing from the date of inauguration of the council.

This fundamental law was however severally amended in 2002, 2006, 2007 and 2011 to spuriously give legal backing to the establishment of non-democratically constituted local governments. In 2002, the Anambra State House of Assembly enacted the Local Government (Amendment) Law No 2 of 2002 which became operational on the 1<sup>st</sup> day of March 2002. This law amended section 208 of the principal law (Local Government Law 1999) by inserting four additional sections (2, 3, 4, 5) to the only one in the principal law. The box below contains the provisions of the amended law.

**Provisions of Law 2002 No2 Section 3 (f) on 'Electing' Nondemocratic Councils**

3. The principal law is hereby amended as follows:

(f) In section 208 thereof by numbering the existing part of that section (1) and thereafter also adding the following new sub-sections, that is to say: "(2) Where an emergency or any other situation arises which makes impossible the holding of local government election within the period stipulated under the principal law as amended, the Governor shall, upon the expiration of the tenure of serving Council Administration, and in respect of each local government in the state, nominate and forward to the House of Assembly a list of not less than five (5) persons to be considered for election into a Transition Committee, provided that such persons qualify to vote or to be voted for in that Local Government

(3) For the purposes of the foregoing sub-section, the House of Assembly shall constitute itself into an electoral college and shall cast votes for the election of five persons as members (one of whom shall be the chairman of the Transition Committee)

(4) The Transition Committees elected under this law shall oversee the affairs of their respective local governments for a period of three months, subject to reappointment; but such Committees shall stand dissolved immediately after newly elected members of the council are sworn in: (5) No person serving as Chairman or member of the Transition Committee shall be eligible to contest for any position in the local government election conducted while he or she is such Chairman or member."

**Source:** Excerpts from the Anambra State Local Government (Amendment) Law No 2 (2002)



The above amendment strategically transferred the nomination of candidates for elections into local government councils to the Governor of the state instead of political parties, and the actual elections to the members of the House of Assembly. The amendment also gave the condition of 'emergency or any other situation', as a reason for the appointment of Transition Committees. Again in September 2002, the Local Government (2<sup>nd</sup> Amendment) Law, No5 of 2002 came into effect. Other amendments to the basic law of Anambra State on Local Government were done in 2007 and 2011. Most of these amendments dealt largely with issues relating to appointment of Transition Committees (Appointed rather than elected Councilors) for the local governments. The 2007 Local Government (NO 4) Amendment law provided specifically for the use of Heads of Local Government Administration (the most senior civil servants) as leaders of the local government. Section 2 (b) of this law amended section 208 of the Basic law again by renumbering the existing section to be sub-section (1) of section 208 and including the following new subsection: "In a situation where no elections are held, the Heads of Service shall oversee the affairs of each Local Government".

Armed with the above amendments, succeeding state governments of Anambra State postponed the conduct of local government elections to fulfill both the provisions of the Nigerian Constitution and her own 1999 Basic Law on Local Government. The table below presents the duration and pattern in which various administrations in the local governments were constituted between 1999 and 2011.

**Table 1:** Patterns of Constitution of Local Government Leadership in Anambra state 1999-2011

June 1999 to May, 2002	June 2002 to April 2006	April 2006 to February, 2007	March, 2007 to September, 2007	September 2007 to June 2011	July 2011 till date	July 2013
Democratically elected councils (elected under the military in the Transition Programme of 1998 and inaugurated in June 1999)	Various Transition/Management Committees	Heads of Local Government Administration (Higher Civil Servants)	Transition Committees	Heads of Local Governments	Transition Committees	Elected LGCs

**Source:** Field Survey (2011)

As shown above, local governments in the state were constituted by elected officials from 1999 to 2002 arising from the Transition Elections conducted by the military government in 1998. Successive Transition Committees were appointed between 2002 to April 2006. The Heads of Local Government Administration (the most senior civil servants) took over from the Transition Committees set up by the state administration of Dr. Chris Ngige as Peter Obi assumed office in March 2006 as the governor of the state. There was a brief attempt to use Transition Committees by the Obi Administration from March 2007 to September 2007. The Obi Administration eventually settled for the use of senior civil servants (Heads of Local Government Administration) from September 2007 till July 2011 when he reverted to the appointment of Transition Committees.

Thus the state has amended its basic local government law as situation arose to effectively deal with it. Many other states have also engaged in various actions to deal with their local governments. Many have created new local governments or what they called development centres, manipulated elections to ensure total win of the ruling party in the state to avoid opposition, or interfered with the allocations meant for the local governments. While some of the States' actions are obnoxious and unprogressive, there are some genuine instances that warrant dealing with peculiar problems of the States that could be hampered by constitutional rigidity. This is why Ikeanyibe (2008) rightly argues that there could be flexibility and dynamism problems regarding local government constitutionalisation in a highly diverse country like Nigeria. The flexibility challenge endears most states to seek for ways to vitiate the constitutional provisions through open disregard or manipulation through state laws.

## 5. Centripetal and Centrifugal Power Relations in Local Government Practice in Nigeria

The last section reveals the existence of clear divergence between the provisions of the various Constitutions of the Federal Republic of Nigeria and the actual practice of local government administration. Apparently the trend has been greater control by the federal government during military regimes. Thus, at this time, the federal government issued reforms unilaterally, appointed sole administrators or management committees to local governments or engaged in other means to reduce state control. Gibson (2004 1-2) provides the rationale for this scenario in many federations in the developing world. He avers, "the 20<sup>th</sup> Century was still an age of centralization, where leaders and revolutionaries built

national states that sought to bring wide scale social, political, and economic change to their countries. In many cases, from Mexico and Venezuela to the Soviet Union, the existence of federal constitutions were mere formalities, or at best institutional devices that effectively linked territories together under a formal federal structure whose constituent units were overawed by the centralizing national state. In others, from Brazil to Yugoslavia, the struggle between central and subnational authorities was permanent and usually settled in favor of the former. To much of the federal world, therefore, the formal jurisdictional divisions, territorially-determined identities, and subnational political structures that embodied the federal political order coexisted with practices and institutions that (sic) tended to keep the spheres of independence of the federations' constituent units to a minimum". This assertion cannot be less true for Nigeria during the military regimes. The various military regimes in Nigeria have struggled to build a federal structure "overawed by the centralizing national state".

On the other hand, the two democratic eras following the constitutionalisation, the Second and the Fourth Republics, show greater determination of state political office holders to control their local governments. In the Fourth Republic as exemplified by Anambra State, political office holders felt that in a classic federal arrangement (dualistic theory), the local government system should be within the state purview of constitutional power allocation, and based on the proclamation of this responsibility in section 7 (1) of the constitution, the state political leaders did not shy away from exercising this power based on their own political expediency. Expediency is determined by such needs as accessing local government finances, using the local governments as platforms to consolidate political positions of state power brokers, and to wade off opposition political parties from controlling the local governments.

This attitude of the state power brokers clearly conflicted with the enshrined local government protective provisions masterminded under the centralising military command structure. For instance, the first attempt to amend the state law to provide grounds for the appointment of Transition Committees in Anambra State came at the heels of the suspension of the conduct of local government elections in 2002 by the federal government at the expiration of the tenure of those elected in December 1998 and sworn in by June 1999. The Federal government suspended the conduct of LG elections in the whole federation to consider some reforms in the local government system and subsequent registration of more political parties by the Independent Electoral Commission. The Obasanjo Administration in 2002, set up a Technical Committee on Local Government Reforms in a military-like approach with little consideration of the difficulty of unilaterally amending the constitution all alone in a democracy by the federal government. The committee, headed by the late Etsu Nupe, Alhaji Sanda Ndayako, was intended to modify the nature of local government practice. The Technical Committee submitted its report in 2006 after much hiccups, but the report has not been made public or in any way implemented, attesting to the opposition to such unilateralism.

Indeed, one of the most contested issues in the various attempts so far to amend the 1999 Constitution has been the issue of local government. Many have called for the abolishment of the Joint State Local Government Account and the need to make federal allocations directly to the local governments. There was also the conflict of who should conduct elections to the local governments between the federal Independent National Electoral Commission and the various State Electoral bodies. Though INEC conducted the 1998 local government elections under the Military watch, all the states have asserted their rightful position to do so based on the powers allocated to them under section 7 (1) of the Constitution by establishing various state electoral bodies. But even when it is clear that state electoral bodies have the power to conduct local government election, the Independent National Electoral Commission (INEC), a Federal Executive Body, remains the only body with the responsibility of compiling and updating the voters register and making same available to State electoral bodies [Electoral Act 2010, 9(2,3)], a factor that was claimed by political officials to have delayed election in Anambra state at some point.

Before the end of tenure of local government officials elected in 1998 in 2002, they have sought to increase their tenure to four years to match with that of other tiers of government. Thus the National Association for Local Governments of Nigeria (ALGON) lobbied the National Assembly to extend the tenure of local government officials, which it (National Assembly) did by legislation. However the Act was subsequently challenged by the states and was eventually quashed by the Supreme Court (Ahmad, 2013). Some of these contentions have been evident since the 1979 Constitution. They underscore the dilemma and conflicting nature of constitutionalising the respective roles of the state and the federal governments in the control of the local government system, and the futile nature of any of these higher tiers of government assuming full control of the system. However, it is the local governments that are the ultimate losers in this conflict.

States find reasons to blame the federal government for their unwillingness to meet the provisions guiding local government practice. For instance, political officials of Anambra state blamed the registration of new political parties by INEC between 2002 and 2003 as factors that led to the failure to conduct elections which was due in 2002. Similarly, other states find reasons to abuse the provisions. Many states, including Kogi, Lagos, Niger, Oyo, Akwa Ibom, Ebonyi,



Bayelsa, Enugu and Kastina, created new Local Government Areas without getting the confirmation of the National Assembly as required by section 8 (5) of the 1999 Constitution. Some of these new local governments are now regarded as development centres but usually benefit from some privileges of the constitutionally recognised local governments such as partaking in the sharing of federal allocations to the local governments.

Obviously, this points to the existence of unresolved issues about the nature of the Nigerian federalism and relative power distribution, especially as constructed under the various military regimes. It is perhaps vital to remark that attempting to impose a common solution or structure of local government in the constitution of a federation challenges the localism principle (Ibietan, 2011). Needs vary from locality to locality, as do wishes and concerns. Local government allows these differences to be accommodated (Stoker, 1990), and states rather than federal government are in a better position to establish the nature of local government that can ensure these differences.

This position of course does not negate the fact that some common national objectives could be wished and pursued in relation to local governments through intergovernmental mechanisms as obtained in some established federations. The American cooperative federalism points to the fact that federal relations can change not necessarily by legal specification which could stifle dynamism and flexibility in local government practice (Ikeanyibe, 2008), as well as encourage conflicts. Federal government can use incentives such as grants and other measures to induce states to establish democratic councils better than constitutionalisation could guarantee.

## **6. Concluding Remarks**

Nigeria's three-tier federal arrangement was designed by the military in its traditional centralising approach to governance. But, rather than provide for the basis for effective, efficient and freestanding local government system, the approach has led to constant disregard of provisions and undermining of local government autonomy by state governments. While the objectives pursued through the legal instrumentation may be good intentioned by the architects of the federal structure, it has not shown that the local government system could well be an equal partaker in a federal contract. It is therefore most likely going to continue to be a contested sphere of influence in the federal arrangement of the Nigerian state.

Invariably, the practice of local government in Nigeria remains a power-relational matter between the federal intention as provided in the constitution and the preferences and expediencies of state political leaders. Omotola (2006) rightly observes that one of the problematic constitutional issues in the Nigerian federal framework is the position of local government. Solving the problem depends on who wins in the contest between the centrifugal and centripetal forces of states versus federal power welders. Apparently, during military regimes, the federal government unilaterally determined policies on local governments with much of the force majeure that could only be exacted by a federal military government. Having mid-wifed the various constitutions, the military ensured that policies become a constitutional issue.

However, during democratic rules in the country, powers tend to tilt to the side of state actors by their disposition to always manipulate the constitutional provisions and resist federal policies to control local governments. The prevailing interest of state political leaders in Nigeria is to control the local government as their sphere of political authority and to use the system to anchor and maintain them-selves in power. Many states tend to appoint the personnel of the local government or to stage-manage elections to ensure the ruling party of the state wins in all the local governments to avoid opposition. To enforce the federal objective of a third tier local government system masterminded by the military through legal and constitutional instrumentation and yet maintain a realistic federal arrangement in which local governments are presumed to be within the purview of the federating units is rather a difficult political engineering for Nigeria. Resolving this dilemma requires taking a bold step to also constitutionalize federal institutions for guaranteeing legal provisions on local government or clearly conceding to states the rights to fully control their local governments.

It is therefore suggested for improved local government practice in the country that national institutions or agencies such as Independent National Electoral Commission (INEC) should constitutionally be empowered to oversee the local government system such as conducting elections as at when due. While this suggestion will tend to increase a centralised federal arrangement, it is a worthy price to pay to achieve the implementation of what is considered a national objective worthy of constitutionalisation.

Alternatively, local governments should be allowed to be fully subsumed under the constitutional powers of the state governments who should be at liberty to establish any model of local government that would be effective and flexible for the States to implement decentralisation and service delivery. In this case, the federal government could apply more IGR mechanisms towards realising desired national goals in local governance. This to me seems to be the classic approach to genuine federalism the Nigerians keep calling for.

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