

Governance and the Rule of Law in Nigeria's Fourth Republic: A Retrospect of Local Government Creation in Lagos State

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Abstract

This paper examines governance and rule of law in the Nigerian Fourth Republic with a view to understudy the case of new local government creation in the fourth republic. This study relied extensively on secondary sources of data collection. It provides analysis on the political dynamics behind the creation of a new local government by Lagos state government, reasons for the creation, and the problem(s) with the constitution on the issue, the reaction from the federal government, as well as court proceedings and judgment. It, therefore, concludes that the Government of Lagos State was justified by creating new LGAs, while president Obasanjo (the then Nigerian President) and his administration acted against the rule of law by withholding the statutory allocations due to local governments in the state.

Key words: Local government; Governance; Creation; Rule of law; Constitution

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INTRODUCTION

In the political history of Nigeria, May 29, 1999, was marked the Fourth Republic and was ruled by Gen Olusegun Obasanjo Rtd. From this period till date, Nigeria had been struggling in the delivery of viable democratic

governance (Jinadu, 2003). It is therefore worrisome that despite the agitations for self-rule, the transition from military dictatorship to civilian government has been so deficient as a result of the sub-standard, and unimpressive record of civil governance and thus exasperating scholars of political science to affirm that despite all political accomplishments in Nigeria, true democracy is yet to gather momentum.

Prior to the return of civilian rule in May 1999, governance and rule of law in Nigeria was very poor and strictly characterised as autocratic, while the human right situation was oppressive and inhumane. Little wonder the esteemed Nobel laureate, Prof. Wole Soyinka, had sometimes remarked and I quote "I smell the sperm of tyranny before the rape of the nation" in a bid to describe the excruciating rule of law and human rights situation in Nigeria during the dark days of military rule (Nwabueze, 2007).

However, in the past seventeen years, the situation has improved, but the drawbacks and ineptitude of the long military interregnum and political rigmarole still affect the rule of law (Ibufuro, 2005). This is because our current constitution (1999 constitution as amended in 2011), which took effect at the beginning of the Fourth republic was a product of the military, and also because democracy has only succeeded in revealing the rot of rule of law. Analysis of governance and rule of law in Nigeria's fourth republic and the socio-economic and political tussle between the federal and Lagos State government on the new local governments created in the fourth republic is the focus of this paper.

Emphatically, governance and the rule of law in Nigeria's fourth republic saw the long battle on the issue of new local government creation by some states, which led to illegal withhold of statutory allocation due to local government in Lagos State. The battle between the federal government and the states involved in the creation of new local government was an important point in the age-long

battle to ensure that Nigeria is not only a federal state by name (Ayoade, 2005). It is therefore pertinent to say that, the abuse of rule of law by political elites without regard to the constitutional provision has become part of the central challenges of governance and rule of law in the Fourth Republic, and indeed, the future of Nigeria.

1. RULE OF LAW AND NIGERIA POLITICS

The Oxford Advance Learner's Dictionary described the rule of law as a condition in which all members of the society including the rulers, complied with the authority of the law (OALD, 2000). Rule of law is also defined as a general application of law, principally sanctioned by the recognised legal authorities, and generally articulated in the form of a maxim or logical proposition (*Black's Law Dictionary*, 1990). This means that the rule of law is a legal principle, established by the government and mainly operated by the lawful officers.

Although the doctrine of rule of law was promoted some twenty five (25) centuries ago by a great philosopher, "Aristotle" but Professor A. V. Dicey is acclaimed as the greatest exponent of the concept rule of law. According to Dicey, the principle of rule of law implies that no one is punishable under law or can be made to suffer except for a breach or violation of the law committed by him, established in a normal judicial manner before a lawyer in an ordinary court of the land (Dicey, 1959).

Rule of law also means that the law should be promulgated in accordance with the provision of the constitution. It means to rule in the public interest as distinguished from a fractional or tyrannous rule in the interest of the single class of individual.

The 1999 constitution of the federal republic of Nigeria, specifically Section 1 of the constitution declared the supremacy of the constitution and asserted that its provisions are binding on all authorities and persons throughout the Federal Republic of Nigeria (CFRN, 1999). Consequent with the above constitutional provision, the doctrine of rule of law infers the absolute supremacy of law. This, in essence, implies that law should be respected by the governing authorities in accordance with the provisions of the constitutions.

As the policies and actions of government unfolded in the fourth republic, which ushered in democratic governance in the political history of Nigeria, it became increasingly clear that the government had little regard for the constitution and the rule of law. Government disdained the rule of law and shamelessly disobeyed or disrespected and disregarded court decisions. A typical case which is so central to this article is that of political conflict between the government at the federal level and Lagos State, on local government creation and the confiscation of Lagos

local government fund by the federal government in the fourth republic.

2. REASONS FOR THE NEW LOCAL GOVERNMENT CREATION IN LAGOS STATE DURING THE FOURTH REPUBLIC

Generally, there are so many cogent and plausible reasons for the creation of a local government in any political settings. In the case of Lagos State, there are several reasons that could be considered as part of why more local governments should be created (Anyim, 2004). It has become axiomatic that Lagos State is the most populated state in Nigeria, the socio-economic hub of the nation, most tax generating state and most financially viable among the thirty six state. Considering the population density and geographical contiguity, the state cannot be compared with any state in the country. It is, notwithstanding, sensible to understand that extension of local government is needed for administrative convenience.

Consequently, those new local government created (now LCDA's) in Lagos State was to serve as vehicles for development at the grassroots. The core objective was to bring the government closer to the people and thus set in motion developmental process at the grassroots level in the state. It is geared towards the socio-economic and political transformation of the state for the overall national development (Ali, 2003). It is worth knowing that, for social service provided by Lagos state government to get to where it is mostly needed and for even circulation throughout the state, necessitate the need for local government extension and thereby the creation of additional local governments in the state (Amuta, 2005). Considering the population of Lagos State as the second largest in 2006 population census, and the number of local government in each state of the federation, Lagos State is one of the states with the lesser number of local governments.

3. POLITICISATION OF LAGOS STATE ALLOCATION TO LOCAL GOVERNMENT IN THE FOURTH REPUBLIC

The bedrock of sources of finance to local government is from the federation account. This has been supervised by the Revenue Mobilisation Allocation and Fiscal Commission (RMAFC) under the presidency. Following the political dispensation in the fourth republic, it was understood that Lagos state allocation to local government was utterly politicised by the federal government and notably by the then ruling party, Peoples Democratic Party (PDP) intended as opposition to the party in Lagos

state, the then Alliance for Democracy (AD). Hence, the financial impasses witnessed in Lagos State by the withholding of funds could be regarded as politicization or political rivalry (Alanamu, 2005).

The president and his administrative body utilized their veto power and every other machinery of government to illegally and unconstitutionally deal with Lagos State government, by blatantly refuse several court order on the issue. The president went so far and violated the 1999 constitution of the Federal Republic of Nigeria. On the order given to the Finance Minister in April 2004 by President Olusegun Obasanjo as cited by Alabi (2006), to states that created additional Local Government Areas:

No allocation from the federation account should henceforth be released to Local government councils of above mentioned states (and any other that may fall into that category until they revert back to their local government areas specified in part one of the first schedule of the constitution. (p.2)

The above statement caused a legal battle between the central government and Lagos State government. The government of Lagos State thereafter took the federal government under president Obasanjo to court and implored the court to determine if for any reasons there is power vested in the executive arm of government or more specifically the president of the Federal Republic of Nigeria (by executive administrative action) to withhold for any period whatsoever the statutory allocation due and payable to Lagos State government in pursuant to the provision of Section 162(5) of the 1999 constitution of the Federal Republic of Nigeria (Ihonwhere, 2007). From a political point of view, it was deduced that the action of the President by non-release of funds due to local governments in Lagos state was more than what is tend to be expected. Rather, it was known to be political frustration. However, despite the court rulings that the money should be released to Lagos State government, the federal government did not bulge and Lagos State government also prove adamant and refused to revert to previous twenty recognized local governments.

4. CONSTITUTIONAL CRISIS AND THE ISSUE OF LOCAL GOVERNMENT CREATION IN THE FOURTH REPUBLIC

It is trite fact to say that the provisions in the 1999 Constitution are more ambiguous than the previous Constitutions, such as the 1989 and 1979 Constitution, especially its provisions on the structure of Local government with specific reference to the process of creating new ones (Ali, 2004). The provision in the 1999 Constitution as amended in 2011, made it relatively difficult for the states to exercise absolute jurisdiction on the creation of a new local government by given the National Assembly the authority to assent in the procedures of creating more local governments by any

states. Also, the citing of names and number of Nigerian local governments in Part 1 of the First Schedule of the 1999 constitution served as a centralized arrangement and thereby creating difficulties in the creation of a local government by the state government. Meaning that no level of government can do it alone. This lends credence to Obianyo (2005) when he rightly observed:

It would appear that the military regimes after creating many local governments put a seal to more creation by any state by including the names of local government in the constitution to make more creation difficult as it is experienced in Nigeria today. (p.4)

Evidently, the government of the state have the power to create new Local Government Areas pursuant to Section 8(3) a, b, c and d of the 1999 constitution as amended in 2011, which states and I quote:

A bill for a Law of a House of Assembly for the purpose of creating a new local government area shall only be passed if -

(a) a request supported by at least two-thirds majority of members (representing the area demanding the creation of the new local government area) in each of the following, namely -

(i) the House of Assembly in respect of the area, 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 the members of each local government council in a majority of all the local government councils in the State; and

(d) the result of the referendum is approved by a resolution passed by two-thirds majority of members of the House of Assembly.

In addendum, Section 7(1) of the Nigerian 1999 constitution as amended in 2011 empowers the Government of every state in the enactment of a law providing for the establishment, structure, composition, financial and functions of such councils (CFRN, 1999).

Therefore, it should be noted that the legal battle between the government of Lagos State and the central government in 2004 was regarded as political impasses in the Nigerian polity. Section 8(5) and 8(6) of the 1999 constitutions amended in 2011 was given a different interpretation by the two parties. The interpretation was to whether Lagos state government satisfied or breached the provision of the constitution or the former President Obasanjo is justified by withholding the federal allocation due to local governments in Lagos State on the grounds of violation of the provisions of the 1999 constitution.

5. COURT PROCEEDINGS AND JUDGMENT

The court proceedings in the Supreme Court on 10th of December 2004, chief Justice of Nigeria Muhammadu Lawal Uwais, led the judgment in Attorney-General of

Lagos State V Attorney-General of the Federation, where the court ruled:

(a) There is no power vested in the president of the Federal Republic of Nigeria (by executive or administrative action) to 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(6) of the Constitution and not the new Local Government Areas created which are not yet operative.

(b) The “declaration that the intention or proposal of the Federal Government to suspend or withhold for any period whatsoever the statutory allocation due and payable to the Lagos State Government pursuant to the provisions of Section 162(5) of 1999 constitution of the Federal Republic of Nigeria will if carried out be unlawful and contrary to the provisions of the said Constitution” is granted, subject to the statutory allocation relating to the 20 Local Government Councils for the time being recognised by Section 3(6) and Part I of the First Schedule of the Constitution.

(c) “A consequential order of this Honourable court compelling the defendant to pay immediately all outstanding statutory allocation due and payable to the Lagos State Government pursuant to the provisions of Section 165(5) of the Constitution of the Federal Republic of Nigeria, 1999.” This is granted in so far as it relates to the 20 Local Government Councils for the time being recognised by Section 3(6) and Part I of the First Schedule of the Constitution.

As further said by the Chief Justice of Nigeria during the proceedings, the creation of new local government areas or councils is supported by the provision of the constitution, which the Lagos State government has maintained.

In supporting the chief justice in the proceedings, Justice Samson Uwaifo commented more explicitly, and caustically that; “It does not appear to me that there is any power contained by the president to withhold any allocation on the basis of a conceived breach of the constitution”.

Another Justice on the proceedings, Justice Niki Tobi on his part asked a rhetorical question: “Does the president has the right to stop the release of funds to the councils?” “I think not”. He notes that “Section 162(5) of the Constitution or any other section for that matter does not provide for the stoppage of allocation from the federation account to the local government councils of Lagos or any other state”.

As cited by Akinsanya (2005a; 2005b); Nwabueze (2007) and Obianyo (2005), Justice Idris Lagbo Kutigi also sounded in support of Lagos state government when he said:

Nowhere in the constitution is the president expressly or impliedly authorized to suspend or withhold the statutory allocations payable to state government pursuant to Section 162(5) of the constitution, on the ground of complaints made against Lagos state by the Federal government in this section or any ground at all. If the president has any grievance against any tier of government, he shall go to court. He cannot kill them by withholding their allocation.

It is therefore pertinent to say that, the action of the federal government is absolutely against the principle of the rule of law, even when the Lagos State Government reverted the newly created local governments to Local Council Development Areas, the federal government was obstinate in releasing the allocation accrued to Lagos State Government.

SUMMARY

Arising from the analysis of political and constitutional battle between the federal and State Governments in the fourth republic on the issue of local government creation, one may conclude through the provisions of the constitution that Lagos State Government was justified in creating new LGAs, based on ranges of reasons such as population expansion, socio-economic development, political devolution and citizens participation among others. It is a trite fact that the Supreme Court adjudged that the allocation withheld are accrued to 20 constitutionally recognised LGAs and not 57 LGAs since the newly thirty seven (37) were not recognised nor enlisted in Part 1 of the First Schedule of the constitution. The Federal Government refused, and adamant to release these allocation on the spurious grounds that the Lagos State Government is likely to utilise the allocation in favour of 57 LGAs, and not for the 20 LGAs recognized and mentioned in Part 1 of the First Schedule of the 1999 constitution, thus, generate thoughtful inquiries on the supremacy of the constitution and raised rhetoric question whether the president is above the law or not in serious violation of the rule of law or breach the provisions of the constitution.

It appeared the president and not the federal government had a peculiar issue with Lagos state government, as the president did not suspend the fiscal allocation of other states (like Yobe, Ebonyi, Katsina, Nasarawa and Niger) that did exactly what Lagos government did. For instance, Yobe State government embarked on the creation of 23 local governments in addition to its earlier 17, making a total to 40 local government areas but was never castigated by the federal government. While other states like Ebonyi, Katsina, Nasarawa and Niger, even though never penalized turned their respective newly created Local Government Areas (LGAs) into what they called “Development Areas”, as posited by Obianyo (2005). At the end of political and legal tussle, just like other state, Lagos

state government converted the thirty seven created local government to Local Council Development Areas, with socio-economic and political empowerment, financed through the allocation given to the twenty constitutionally recognized Local government areas and through the enormous internally generated revenue by the state.

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