

## A Critical Examination of Local Government Administration in Contemporary Nigeria and France

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**Abstract.** This study examined critically whether Nigerian local authority enjoys relative autonomy in their day to day operations from the central and state governments as that of local authority in many advanced countries do. It is against this backdrop that the study examined the government tier structure of France and Nigeria. The study adopted qualitative method. Data collected was through books, journals, published and unpublished articles and materials and internet. Case-law books complemented the major sources of data. It was discovered that France and Nigeria exhibit divergence in the manner of constitutions, which provides difference in degree of autonomy enjoyed by the local government. The study concluded that in Nigeria the structure has not lifted the local government beyond an embedded system in a dual federal structure in which the states merely deal with local governments as appendages rather than as separate tier of government. And that in France, the structure provides relative political and fiscal autonomy, but inhibits smooth fiscal control by federal government that makes constitutional changes more frequent. Finally, and against the drub in both experiences, it is seen that federalization through constitutionalism still has its limits.

**Keywords:** Advanced countries, Contemporary Nigeria, Local autonomy, Local authority, Local Government, Tiers

### 1. Introduction

Federalism was originally conceived as sharing of political powers between two levels of government. Steytler (2005), remarks that the first model federal constitutions of the modern era did not include Local Government as an order of government; thus, making Local Government a creature of state, regional, or provincial power. Today, the concept of federalism has gradually diffused to include various categories of decentralization arrangement that involves not just two levels of government i.e. the union and the

federating units like states, cantons, regions, provinces, but also the Local Government level or municipalities. According to Steytler, (2005), it is no more the issue of how power is shared between the federation and the second level federating units but how the Local Government powers, functions, and financing should be given some constitutional leverage and protection that are beyond the wishes and caprices of the higher tiers of government.

The Constitutions of many advanced countries such as Germany (1949), Spain (1978), France (1982), and also, the developing countries like India (1992), South Africa (1996), Nigeria (1979/1999) to mention a few have all made constitutional provisions that aim at ensuring significant decentralization and local autonomy. Nigeria and France are considered in this study. The two countries have enormous differences that can be counted, in their model and Local Government systems. Nigeria practices the federal presidential system of government while France is a unitary Republic. Both countries have experienced autocratic regimes like military governments that have tended to concentrate power at the centre. Though Nigeria is not in any dimension comparable to the French landmass, it exhibits substantial centripetal forces that require effective decentralization to satisfy local desire for relative autonomy. Ikeanyibe (2008:31-32) noted that ‘in Nigeria where ethnic nationalities are inclined towards self-determination, there is no gainsaying that the Local Government as constitutionally recognized would serve to grant some level of political autonomy to small ethnic nationalities’.

The importance and the constitutional recognition of Local Government as a third tier government in designing the two countries’ political structure are therefore a ploy to balance centrifugal and centripetal forces. The key question remains whether Local Governments system in Nigeria have enjoyed relative

autonomy from the Central Government as in the case of their counterparts in France.

As Gamper (2005) queried, can the Local Government level be equal third partners as units in a federal contract? Have the de jure constitutional provision and protection of basic powers, functions, financing of Local Governments de facto ensure adequate and relative autonomy for the local government system of France and Nigeria? This study is an attempt to examine this ever recurrent decentralization poser in the case of France and Nigeria. More specifically, the guiding research questions are:

- What are the special features of the Local Government structures of France and Nigeria? To what extent has this model facilitated the institutionalization of significant autonomy for the two countries' Local Government systems?
- What are the lessons drivable from the model and its practices in both countries for the theory and practice of Local Government administration?

The study is mainly historical and descriptive. It is qualitative in nature drawing sources largely from constitutional provisions on Local Government in both countries, books, articles, journals, published and unpublished materials and existing scholarship on Local Government autonomy and intergovernmental relations.

## **2. The Concept of Federalism and the Importance of Independent Functions of States and Local Governments**

The word federation is enlarged to describe various kinds of State's organizations. This invariably leads to various kinds of theorization about the process, structure, and the overall objective of the principle of federalism. It should be noted here that one cannot be discussing issues relating to Local Government and autonomy without delving into the concept of federalism which simply connotes the sharing of powers between the federal and component units. The word is derived from Latin 'foedus' meaning pact, alliance, covenant, an arrangement entered into voluntarily and implying a degree of mutual trust and duration (Dosenrode, 2010). Obianyo (2005) notes that even though federalism has attracted a wide variety of meanings and definitions, it has not lost its essential characteristics or content, which in the view of Wheare (1964), is the method of dividing powers of government in a State so that general and regional governments are each within a sphere, coordinate and

independent. It is the idea of self-rule and shared rule, which Wheare (1964) and Elazar (1987) regard as the federal principle. For Wheare, (1964: 35-36), the workability of the federal principle is contingent on the recognition of the dual prerequisites of federalism which according to him entails that the communities of states concerned must desire to be under a single independent government for some purposes, and secondly, they must desire at the same time to retain or establish independent regional government in some matters at least.

A critical factor is how this self-rule and shared rule is realized. There is also the issue of whether Local Governments can actually be a coordinate partner in the federal contract. Wheare (1964) conceives 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; Coordinate 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; the powers to amend the constitution to be exercised by both levels of government acting in cooperation; Financial independence of both levels of government as financial subordination makes an end of federalism.

From the above, constitutionalism is considered very significant in the allocation and protection of powers of Central Government and coordinate units, hence the requirement that constitutional powers of changes and amendment must be exercised by both levels of government.

In the words of Obeche (2009) the alternative theoretical bent in explaining federalism is that which stresses the role of the socio-political make-up of a country and the diversities within rather than power sharing. These theories are relevant in this work because it basically explain federalism as an instrument for managing diversity and ensuring the autonomy of units that are sociologically different from others within a polity. Among the foremost proponents is Livingstone (1985:22) who explains federalism as a device by which the federal qualities of a society are articulated and protected. For him, 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. A federal government is merely a device by which the federal qualities of society are articulated and protected.

Powers are dispersed but they are less sharply separated as in a dual system. Often policy that is established on the central level is executed by the federating entities. The sociological and integrative theorists will rather prefer that constitutionalism in federations should not be such as to hamper cooperative relationship between tiers of government since federalism is a process rather than a structure (Elazar, 1987). The model apparently recognizes the Local Government as a partner in the federal contract because of the emphasis on cooperation and principle of subsidiary. By constitutionalizing the Local Government system, dual federalism is further extended to three-tier arrangement.

Today, increasing number of countries pursue this programme in the bid to ensure guaranteed autonomy and local power devolution that goes beyond the wishes or laws of higher level governments. Chaturvedi (2006) defines autonomy as a grant of authority to a political organization within a geographical area to decide and determine its own course of action. Awotokun & Adeyemo (1999) define it in relations to the Local Government as a system in which Local Government have an important role to play in the economy and the intergovernmental system, have discretion in determining what they will do without undue constraint from higher levels of government, and have the means or capacity to do so. They prescribe what they describe as three dimensions of Local Government autonomy. These are (1) Local Government Importance (2) Local Government Discretion and (3) Local Government Capacity.

Local Government Importance is explained in terms of the relative role of Local government in the state economy and intergovernmental system. As they averred, "A local government system in which local government is free to do what it wishes but has no possibility of doing anything important does not conform to our concept of local autonomy." Local Discretion refers to "the ability of local government to engage in activities as it sees fit, free from constraints imposed by the state government", while Local Government Capacity conceptually includes a broad range of attributes, including resource sufficiency and stability, professional skills, management competence, quality of service delivery (Awotokun & Adeyemo,1999). It is important to point out that these aspects of Local Government autonomy apply to both unitary and federal states and

may not require constitutional provisions. The constitutional provision of powers of Local Governments within a federal state relatively places that power above what can ordinarily be changed by the laws made by higher order governments, and thus elevates local governments in such countries to having a stake in the federal contract in which that power cannot be tampered with unilaterally. This as well, does not seem to ensure the importance, discretion and capacity of Local Governments. Relative autonomy is therefore conceived here as the degree of being self-governing by the Local Government level granted by the federal constitution itself. It is a relative freestanding of Local Government to carry out functions or exercise powers in accordance with constitutional provisions rather than as granted by the laws of the second tier level government within which a Local Government exists.

Following from the above, we then operationalize the concept of Local Government autonomy here in terms of (1) Assigned powers of Local Government granted by the federal constitution itself rather than the laws of State, provincial or the second tier level governments (2) fiscal federalism that recognizes the Local Governments in constitutionally stipulated tax bases and fund sources, and, capacity to enjoy the above two without interference from higher level government.

These features accommodate both de jure and de facto existence of Local Government autonomy vis-à-vis the imperatives of the federal constitutional provisions.

### **3. Examining the Local Government Relative Autonomy in the Federative Structures of France and Nigeria**

As indicated above, the Local Government relative autonomy in France and Nigeria in this study is evaluated in terms of (1) the constitutional basis of Local Government powers as provided and protected by the federal constitution and (2) fiscal federalism that recognizes the Local Governments in constitutionally stipulated tax bases and fund sources.

France has three levels of Local Government namely the Communes, Départements and Régions. The first two were created immediately after the Revolution, in 1789 and 1790, while an act of 1982 established the third level of "self-administration". These three levels share the juridical status of "collectivités territoriales," created under the Constitution of 1946 and confirmed by that of 1958; they are entitled to "administer themselves freely by means of elected

councils and under the conditions provided by the law". Their activities are governed by a Code -the 'code général des collectivités territoriales' Other administrative units also exist - 'arrondissements' and 'cantons' as sub-divisions of the départements; and 'communautés urbaines', 'districts' and 'pays' as agglomerations of small communes in urban and rural areas. The position of Local Government in France is strengthened through case law in the Constitutional Council which establishes the principle that: 'the autonomy guaranteed by the Constitution has to be respected by Parliament when regulating Local Government by law, as it is entitled to do. There is a core undetermined which should not be infringed by acts of Parliament' (Prud'homme, 2006).

France is a unitary Republic and 'no section of the people may take over the exercise of sovereignty'. In theory the Parliament does have the power to regulate local government at will.

In France the 'code general' entrusts the Communes with certain mandatory functions (competences, obligatoires). The principal ones are school buildings, fire, police, preventive health, land use planning, road maintenance, and some social welfare benefits. Otherwise, as noted above, all levels of Local Government enjoy 'territorial competence' which was first granted to the Communes in the Municipal Act of 1884. The major discretionary functions exercised by the communes relate to culture and tourism, social assistance, and aid to industry.

In practice, because of the very small size of the majority of communes (90% have fewer than 2,000 inhabitants) they have been obliged often by fiscal pressure from the State to join together in a multiplicity of joint organizations in order to preserve their local autonomy. About 900 of these joint organizations are vested with powers of taxation (Prud'homme, 2006).

Because the three levels have parallel powers (except where the law prescribes sole competence) there is pressure for the three levels to co-operate both in planning and execution. Generally the départements vie to represent in the regional councils the interests of the small communes, the great majority of which have no local leaders to represent them, particularly against the strong representation of the large cities. The untidiness of the system contradicts the principles of clarity of function and accountability. Nevertheless it ties interests together from top to bottom of the governmental ladder in networks of communication and influence.

In France local authorities are obliged by law to decide their annual budgets by a fixed date, to present balanced budgets, and to provide for all obligatory expenditure.

They are required to follow guidelines established by the Ministry of Finance, and to observe limits set on their freedom to fix and to vary their taxes. Otherwise they are free to spend as they wish. The levels of the principal local taxes, on which all three levels of government draw, are set by the local authorities; but they are collected by the national tax office and redistributed. These are the taxes professionnelle (49.6%) levied on industrial and commercial businesses and liberal professions; the foncier bâti (26.1%) levied on owners of buildings; the foncier non-bâti (2.1%) levied on undeveloped urban land, agricultural land and forests; and the taxe d'habitation (22.2%) based on the rental value of dwellings.

According to Dosenrode, (2010), over 75% of commune revenue is from these four taxes in the proportions indicated above. The regions and departments draw on all these, but also rely for between 30% and 40% of their revenue on indirect taxes - the Regions on electricity consumption, vehicle registration, and property transfers; the Departments on motor vehicle tax, and land registration.

As in the case of the Nigeria, the 1999 constitution, which does not differ significantly from the 1979 constitution that introduced the idea of third tier Local Government provides in various sections the nature, number and names, functions, funding and many other issues that are meant to guarantee constitutional autonomy of Local Governments. These include:

- (i) In Section 1 (2) the 1999 Constitution provides that "Nigeria shall be a Federation consisting of States and a Federal Capital Territory." But in section 3(6), it also provides that "There shall be 768 Local Government Areas in Nigeria as shown in the second column of Part I of the First Schedule to this Constitution and six area councils as shown in Part II of that Schedule" making the number of Local Governments 774;
- (ii) Section 7 (1) provides that the system of Local Government by democratically elected Local Government Councils is

- under this constitutional guaranteed, and accordingly, the government of every state shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils;
- (iii) In 7(5), it provides that “The functions to be conferred by Law upon Local Government Council shall include those set out in the Fourth Schedule to this Constitution.”
  - (iv) Section 8 provides a complex procedure for creating States or Local Government. Section 8 (3) particularly provides for a bill for a law of a House of Assembly for purpose of creating a new Local Government area to be passed by the National Assembly;
  - (v) The 1999 Constitution stipulates an arrangement that allows for statutory allocation of public revenue from the federation account to States and Local Governments (Section 7(6) declares: Subject to the provisions of this Constitution –

- (a) The National Assembly shall make provisions for statutory allocation of public revenue to Local Government Councils in the Federation; and
- (b) The House of Assembly of a State shall make provisions for statutory allocation of public revenue to Local Government Councils within the State.
- (c) Section 162, the Constitution provides some details about allocation to local governments thus:
- (d) “Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.”
- (e) The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the State for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.

Most of the provisions on Local Government incorporate some ambivalence. For instance, Local Governments are primarily to be created by State laws. Since the constitutionalisation of Local Governments in 1979, there have been issues about establishing elected councils as provided in the constitution, creation of new Local Governments outside those recognized in the constitution and releasing of revenues to the Local Governments.

Since the return to democracy in 1999, States have not generally respected constitutional provisions on Local Government. Despite the provisions of the 1999 constitution in Section 7 (1), many States have continued to appoint non-democratically elected councils. Those that hold elections virtually restrict competition.

In 2004, former President Olusegun Obasanjo threatened to withhold the federal allocations of some States that created new Local Governments. The affected states were Lagos, Ebonyi, Kastina, Niger and Nasarawa (Obianyo, 2005). The federal government also made its threat real by stopping the federal allocations to Lagos State Local Government Councils pushing the State Government to take the Federal Government to court on the matter.

For all intents and purposes, it is clear that basic features and powers of Local Governments in France and Nigeria are de jure provided in their constitutions. While the French case can more clearly be seen to actually place Local Government on a third tier status, the Nigerian case is ambivalent and provides legal loopholes that have generated more conflicts in intergovernmental relations.

In Nigeria, Local Governments de jure share in fiscal federalism in two ways: (1) direct financial allocations from the Federation Account in the same way the federal government and states also get allocation and (2) internally generated revenues also stipulated in the federal constitution. Section 162 (3) of 1999 constitution provides that ‘any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly’. Unfortunately, the Local Governments do not get their allocations directly but through the States. Section 162 (5, 6,7 and 8) of the 1999 constitution provide guidelines for making federal allocations to the Local Councils. Federal allocations for the Local Councils are first allocated to the States for the benefit of their Local Government Councils in such manner and terms as may be prescribed by the National Assembly (162:6) through the ‘State Joint Local Government Account’ (162: 7) and then distributed among the local government councils of that state on such terms and in such manner as may be prescribed by the House of Assembly of the State (162:8).

In the Second Schedule, part II (10) and Fourth Schedule of the 1999 constitution, the sources of Local Government internally generated revenues

include tenement charges on private houses, rates, stipulated licenses, fees and fines, rents on Local Government properties such as market stalls and motor parks.

In Nigeria, a large part of Local Government funding also come from federal allocations. The internal revenue sources as provided in the Second Schedule, part II (10) and Fourth Schedule of the 1999 constitution include taxes, rates, licenses, fees and fines, rents on Local Government properties such as market stalls and motor parks. The greatest problem with most of these sources as Oguonu (2007:138) remarks is that most of them are yet to be tapped in most Local Governments.

#### 4. Conclusion

The practice of entrenching the autonomy of Local Governments constitutionally is becoming a popular international practice. Both federal and unitary States adopt this practice. In a federation, the approach somewhat elevates the Local Governments to a third tier status that makes them partners to the federal contract. This practice does not necessarily guarantee de facto autonomy to the Local Government system (Steytler, 2005).

For the Nigerian case, the approach employed in allocating the powers of Local Governments is to make the powers and functions of Local Government Councils inchoate without the laws of the States. This approach fails to realize the goal of political autonomy for the Local Government. The power of bringing the Local Government Council into existence is purely a matter of State Government as provided in section 7 (1), "... government of every state shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such Councils". In most of the functions or rights of Local Government including the issue of fiscal allocations, it is ironical that the State House of Assembly is mentioned as the determiner of the functions or allocations despite constitutional provisions.

For instance, while the Local Government Council has power to make assessment for tenement rates, the taxes to be levied are "as may be prescribed by the House of Assembly of a State." The failure to clearly establish the powers, functions, direct access to federal allocations and other protections for Local Government in the constitution makes the Nigerian Local Government system not to enjoy relative autonomy.

In conclusion and as Nwabueze (1994) argued, if the State Government has the constitutional power to establish Local Government and to define its structure and functions which the constitution also stipulates, it clearly and necessarily implies that Local Government is a mere agency or creation of the State Government in Nigeria. Rather than help realize Local Government relative autonomy, constitutionalisation of Local Government in the manner perfected in Nigeria, encourages conflict between the States and Federal Government, and even competition between the States and their Local Governments. The 1982 constitution of France not only provides principles, rules and rights, but also a wide range of public policies for the municipalities. Local authorities have also managed to turn the complexities of the bureaucratic system to their advantage and create their own room for manoeuvre.

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