

## THE TIER STATUS OF LOCAL GOVERNMENT IN FEDERAL CONSTITUTIONS: AN OVERVIEW OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999\*

### *Abstract*

Scholars and stake holders of grassroots government have criticized the hoary duo-legged federal structures of states. They seek autonomy and constitutional provisions for local government. Employing the analytical research method (using case law, constitutional/statutory provisions, textbooks, journals and internet materials), this paper seeks to establish the need to change from duo-dimensional federalism to trio-dimensional federalism to attain the maximum gains of federalism. It finds that the Durham Report for constitutional recognition for local government in Canada in 1839 resulted from agitations<sup>1</sup>; duo-dimensional crusaders have not spared the United States' federalism<sup>2</sup>; Nigeria recognised local government as a tier of government in 1976; constitutionally provided for them in 1979 and has maintained them until the 1999 Constitution came into force. This paper, *inter alia*, recommends full tier constitutional status and provisions for local governments in federal states. **Key words:** Federal, Constitution, Nigeria, Local Government, Autonomy and Tier.

**Keywords:** Tier, Local Governments, Federal Constitutions, Nigerian Constitution

### 1. Introduction

The indispensability of local government in states of the world hardly needs any emphasis. It is for their importance<sup>3</sup> that they are found in every country of the world. It is contended that local governments should exist as tiers of government and not as mere agencies/appendages of states. The Durham report advocated for Constitutional provisions for local government in Canada<sup>4</sup>. This was followed by the Federation of Canadian Municipalities (FCM) demand for an enlarged and enhanced 'role for local governments in any new constitutional framework and to ensure its autonomy.'<sup>5</sup> In 1980, the FCM, in a presentation to the Parliament Joint Committee on the constitution, sought: '...the recognition of municipalities as a 'distinct level of government under the new constitution' and moreover, that the constitution assigns certain powers to the municipal level of government'<sup>6</sup>. This demand came after the federal government had failed to accede to similar demands previously. The Canadian prime minister on the 9<sup>th</sup> October, 1978, wrote to the FCM in the following terms:

The federal government thinks it would be desirable to consider whether a new constitution should not recognize specifically the existence, and the need for existence, of the third level of government ... Provided that the ultimate responsibility of the provinces is not in question, there could be merit in trying to describe in the constitution the role which the 'third level' plays in the total fabric of Canada. It could also be useful to try to spell out the basic kind of services that are traditionally provided by the 'third level'.<sup>7</sup>

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<sup>1</sup> J. J. McCullough, 'J.J.'s Complete Guide to Canada': Web Accessed 30/01/2019.

<sup>2</sup> Redlich Norman 'Are There Certain Rights Retained by the People?' [1962] 37 *N.U.L.R.V.* p. 807.

<sup>3</sup> E. U. Abba & V. Nwanne, *Local Government Administration in Nigeria* [Onitsha: Abbot Books Ltd., 2007] p. 7 to 12 see also A. D. Yahaya, *Native Authority System in Northern Nigeria* [Zaria: A. B. U. Press, 1980] p. 54; O. F. Fajobi, *X-Ray of Local Government Administration in Nigeria* (Ibadan: Cresthill Publishers Ltd., 2010) pp. 4 and 5; I.B. Bello-Imam, *Local Government in Nigeria: Evolving Third Tier of Government* (Ibadan: Hinemann Educational Books (Nigeria) Plc., 1996) p. 5-11.

<sup>4</sup> Dewing Michael *et al.*, *Municipalities, the Constitution and the Canadian Federal System* (Ottawa: Library of Parliament, 2006) p. 2.

<sup>5</sup> *Ibid*, p. 5.

<sup>6</sup> *Ibid*, p.10. Contained in the 'minutes of the special Joint Committee of the Senate and House of Commons on the constitution of Canada, 20 November, 1980, 9:10'.

<sup>7</sup> *Ibid*, p.10 though in the economy of magnanimity towards the grant of the autonomy or constitutional recognition o for local governments, it is difficult to eschew the fact that it is a tier of government. Constitutional provisions to this effect would be nothing more than effectuating what even the occupants of the higher levels know is not only the right thing but is also the wish of the people at the grassroots

In Nigeria, the struggle has been for the autonomy of local governments<sup>8</sup>. Their constitutional status is not in doubt, but states' domination of local governments has made them look more of states' agencies/appendages than a tier of government.

## **2. Evolution of Local Government as a Tier of Government in Nigerian Post-Colonial Constitutions**

The 1979 Constitution was the first in Nigeria to contain provisions for local government. It was a federal constitution but provided for the establishment of local governments in a manner that made it difficult for one to legally refute their tier status. That constitution provided that 'The system of local government by democratically elected local government council is under this Constitution guaranteed... every State shall ensure their existence under a law which provides for their establishment, structure, composition, finance and functions of such councils'.<sup>9</sup> The 1979 provisions for the territories of the grassroots government have generated some controversy leading to the contention that local governments under the 1979 constitution regime were agencies of states<sup>10</sup>. It provided that 'Each state of Nigeria named in the first column of part I of the first schedule to this Constitution shall consist of the area shown opposite thereto in the second column of that schedule.'<sup>11</sup> Disputing that this was a provision for local government areas, Nwabueze maintained that:

Under the 1979 Constitution, the area of each state was defined by reference to named local areas, those named areas were not explicitly stated to be local government areas. Nowhere in the constitution were they referred to as local government areas. It just happened that they corresponded to the names of existing local government areas. But some of them e.g. Abakaliki, Onisha or Enugu in Anambra State, are also the names of existing towns. It follows that the areas named could be reference either to existing local government areas, existing towns or simply local communities.<sup>12</sup> (Emphasis supplied).

We decline to agree with this jurist. The provisions of section 7(1) quoted above would have been unnecessary if the areas described in section 3(2) of the 1979 Constitution were not meant to be local government areas. The 1976 local government reforms that preceded the 1979 Constitution both of which were projects of the Murtala/Obasanjo's military administration did recognise local governments as a tier of government. The lack of explicit constitutional provisions recognising these areas as local government areas was cured by their implied constitutional recognition which Nwabueze referred to as a coincidence<sup>13</sup>; they were indisputably local government areas by the states' various local government laws establishing them which were existing laws constitutionally<sup>14</sup>. The areas prescribed by section 3(2) of the 1979 Constitution were meant to be local government areas thus the need for the provisions of section 7(2)-(6) of the 1979 Constitution for the demarcation of local government areas among other things.

## **3. The tier status of local governments during the military regimes of Babangida and Abacha, 1985-1998**

The Babangida's local government regime presents an example per excellence of a local government as a tier of government in a federation. The need for a harmonious tier relationship between states and local governments was captured in the words of the then second in command to the head of state as follows: 'It is important that local and state governments should see themselves as partners in progress, the two tiers of government are expected to inter-relate harmoniously...'<sup>15</sup> In his address to the nation on local government in 1987, Major General Babangida, the

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<sup>8</sup> Federal Government of Nigeria, Report (Vol. 2) of the Technical Committee on Reform of Local Councils in Nigeria (Abuja : National Assembly Press, 2003);

<sup>9</sup> 1979 Constitution, s. 7(1); see also M. O. Ugwu 'Methodological Approach to the Challenges of Local Government Administration' in H. Dabin (ed) *Local Government System in Nigeria*, (Abuja: Peoples Democratic Institute, 2005)p. 98-100.

<sup>10</sup> B. Nwabueze, *Constitutional Democracy in Africa* Vol. 1 (Ibadan: Spectrum Books Ltd, 2003) p. 157.

<sup>11</sup> (n9) s. 3(2)

<sup>12</sup> B. Nwabueze (n10) p. 164.

<sup>13</sup> (n10).

<sup>14</sup> Nigerian Constitution, 1979, s.174.

<sup>15</sup> A.A. Aikhomu, in the 'foreword' in O. O.Oladosu, *Handbook on Local Government Administration*, editor, (Lagos Ultimate Press Ltd, 1992) pp. i and ii .

then Military Head of State said his government was: ‘...committed to making local government a third-tier of government in practice. This will enable basic development to take place at the grassroots level where most Nigerians live’.<sup>16</sup> By these guidelines made pursuant to Decree No. 12 of 1985<sup>17</sup> Babangida’s committal address in 1987, local government councils’ elections were conducted in 1992. More importantly, it was a presidential system of government that was adopted for all the local councils and funds were allocated to them directly from the ‘Federation Account’. The Abacha era, denied local governments the features of a tier of government in full though not necessarily abolishing them. By Decree 107 of 1993, the 1979 constitutional provisions for local governments were restored<sup>18</sup>. The Decree approved a ‘Sole Administrator’ for each local government area<sup>19</sup> with executive and legislative powers reposed in him<sup>20</sup>. It was a wolf begat wolf system that surprised no one with the faintest idea of the government ran by Sani Abacha, the military head of state, 1993-1998<sup>21</sup>.

#### **4. The 1999 Constitution of Nigeria and the Tier Status of Local Government**

Section 3(2) of the 1999 Constitution explicitly provides that the areas of each state are local government areas thereby clearing any fog that was ‘created’ by its 1979 predecessor. The high lights of these constitutional provisions reveal the following necessary ingredients of a tier of government: Each local area is not only defined by name in Nigeria but also by its territory<sup>22</sup>. Each local government area is to be managed by a democratically elected council<sup>23</sup>. Each local government area had its population<sup>24</sup>.

#### **5. Factors militating against the tier status of Government in the Nigerian Federation**

There are factors that war against accepting the tier status of the local government in the Nigerian Federation. There is, firstly, the challenge of the theory of federalism that advocates duo-legged federalism. Wheare, a lead proponent of this view, opined that:<sup>25</sup> ‘The federal principle requires that the general and regional governments of a country shall be independent each of the other within its sphere, shall be not subordinate one to another but co-ordinate with each other’.<sup>26</sup> (Emphasis supplied). This duo dimensional federal standard set by Wheare is sought to be made an iron law of federalism that is inadmissible of any other tier of government. This ‘iron law’ of federalism could be negated by the constitutional provisions of any federal state. Adherence to ideal constitutional theories is never a condition precedent for the validity of the express provisions of any constitution. In *A. G. of Abia State and 35 ors. v. the A. G. of The Federation*<sup>27</sup>, it was the court’s position that a principle of constitutional law could be excluded by an explicit constitutional provision. This is a limit to the arguments for ideal federalism.<sup>28</sup> Furthermore, it was Wheare’s finding that in practical terms, only the federations of the United States of America,

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<sup>16</sup> Quoted by P. E. Oga ‘Necessity of Budgetary Culture and the Process of Attaining Responsible and Accountable Budget’ in Haruna Dabin (n9) p. 248 at p.249. See also Sarah R. Ochekepe ‘Mobilising towards Grassroots Development’ in Clem Oluwole (ed), *Catalysts for Local Government Administration in Nigeria, A Compendium of Seminars/Workshop Papers* (Jos: Matchers Publishing Ltd., 1998) p.100.

<sup>17</sup> Laws of the Federation of Nigeria, which came into force on the 1/10/1992.

<sup>18</sup> Decree No. 107, 1993, Laws of the Federation of Nigeria, Section 1(1) and (3).

<sup>19</sup> (n15) s.2(8)

<sup>20</sup> (15) s.4 (3).

<sup>21</sup> Note that the draft Constitution of 1995, s.7 merely gave the offices of the Chairman and Vice-Chairman of a local government recognition. By s.7 (13) and s.8, local governments merely had tier recognition but were left largely at the mercy of states.

<sup>22</sup> Nigerian Constitution, 1999 s.3 (2) and the schedule thereto.

<sup>23</sup> 1999 and 1979 Nigerian Constitutions s.7 (1) of each of these two.

<sup>24</sup> United Nations Summer Conference on Local Government in Africa (Cambridge,) p.11 cited in Kehinde M. Mowoe, *Constitutional Law in Nigeria* (Lagos: Malthouse Press Ltd.,2008) p. 240.

<sup>25</sup> K. C. Wheare, *Federal Government* (London: Oxford University Press, 1963) p. 93.

<sup>26</sup> *Hoke v. U.S.* 227 U.S. 308, 322.

<sup>27</sup> [2003] FWLR (pt 152) 131 at 163. See also *A. G. Ondo State v. A. G. of the Federation* [2002] 9 NWLR [pt 772] 222, also reported in (2002) 10 NSCQR (pt. 2) 1034, *A. G. Bendel State v. A. G. Federation* (1981) 1 SC 1 at 75 also reported in [2001] FWLR [pt 65] 448, [1981] 3 NCLR 1, (1981) All NLR 85; *Bribery Commission v. Patrick Ranasungha* [1965] AC 172, [1964] 2 WLR 1301, [1964] 2 ALL E.R. 785.

<sup>28</sup> Ben Nwabueze (n10).

Australia, Switzerland and Canada, meet the requirements of his definition of federalism of all the federations of the world<sup>29</sup>. This finding accords with the fact that every federal state has its peculiarities; these peculiarities could be historical, cultural and/or socio-economic and account for the differences in the constitutions of federal states of the world.

Secondly, there is the factor of the non recognition of local governments as a tier of government in most of the federations of the world. In Russia, 'The fundamental principles of local self-government in Russia are set forth in the federal law on local self-government in the Russian federation...this law also grants uniform legal status to all local governments...' <sup>30</sup> Part of the Russian constitution<sup>31</sup> is devoted to local self-government. By a federal law of 2003, the Russian Federation has three distinct levels of political administration; the federal, province and the local government with the hope of 'real political independence of local self-government, representing interests of local community'<sup>32</sup>. In Canada, the Durham Committee Report of 1839<sup>33</sup> and other agitations for constitutional recognition for local governments have not yielded the desired results. Local governments remain matters of provincial legislative concern without constitutional recognition in the sense demanded by agitators. The reason for the Canadian constitutional inadmissibility of local government as a tier of government may not be unconnected with the history of that federation. The Canadian Federation came into being after several British colonies agreed to come together as a federation. Part of the 'deal' was that each federating unit was to take charge of its local affairs<sup>34</sup>; this accounts for the reluctance of Canadian provinces to concede the existence of local governments to constitutional provisions and, perhaps, beyond their control. In the United States of America, 'localities can be created, destroyed and reorganised at the whims of the states'<sup>35</sup>. This position received judicial blessings in *Hunter v. City of Pittsburgh*<sup>36</sup>. The court held that Localities are not more than: 'Convenient agencies for exercising such governmental powers of the state as may be entrusted to them'<sup>37</sup>.

## **6. The Unconstitutional Conducts of States Towards Local Government in Nigeria**

State governments certainly have powers to legislate on local governments' affairs by virtue of the Constitution of Nigeria, 1999, section 7(1). The latitude of constitutional power to do so has been largely abused by states. The frequent interruption of the tenure of democratically elected councils, institution of caretaker committees at the local government level, granting local government councils short tenures etc. has created the impression in some minds that local governments under the 1999 Constitution regime are appendages of states<sup>38</sup>. This shall be treated in greater details presently. The above three reasons may be the explanation for the reference to the demand for constitutional recognition for local government in Nigeria as 'strange' and 'novel' in response to a suggestion that organs of local governments be constitutionally provided for. It was maintained that:<sup>39</sup> 'What was being demanded is to terminate the status of local government as an agency of the state government, and to establish it as a government existing separately from, and independently of, the state government.'<sup>40</sup> The jurist argued that it is strange for local governments to relate with the federal government in the same way states do; and that local governments should not have exclusive legislative areas that states would be forbidden from making laws, though, he conceded, that functions meant for local governments in the constitution 'belong to the former [local

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<sup>29</sup> Stein B. Michael, *Federal Political systems and Federal societies*, Web. Accessed 1/7/2011.

<sup>30</sup> Galina Kurlyanskaya et al., 'Local Government in the Russian Federation'. Accessed 14/1/2019.

<sup>31</sup> Chapter 8 of the Russian Constitution.

<sup>32</sup> I. D. Turgel, 'New Local Self-Government Reform in Russia: A Step to Decentralisation or Consolidation of Vertical Authority?' <https://www.researchgate.net/publication/256051839> accessed 11/02/2019

<sup>33</sup> McCullough (n1).

<sup>34</sup> Ibid.

<sup>35</sup> S. Jake, 'The Tenth Amendment and Local Government' [2003] 112 *YLJ* p. 1935 at 1936

<sup>36</sup> [1907] 207 U.S. 161

<sup>37</sup> Ibid. at 178.

<sup>38</sup> Ozohu-Suleiman Abdulhamid & Paul Chima, 'Local Government Administration in Nigeria: The Search for Relevance', *Common Wealth Journal of Local Governance*, <https://express.lib.uts.edu.au> accessed 8/02/2019.

<sup>39</sup> Nwabueze Ben (n10) pp. 156 and 157.

<sup>40</sup> Ibid, p. 157.

governments] to the complete exclusion of the state government'.<sup>41</sup> These implications, he argued, made the demands for the constitutional provisions for local governments 'strange and novel.'<sup>42</sup> Much as the arguments against the constitutional recognition of local government in Nigeria as a tier of government are, there is the outweighing merit in the arguments in favour of their constitutional recognition. Firstly, historically, local governments (formerly called 'Native Authorities' in colonial and part of our post colonial experience), though without written constitutional recognition, wielded powers that only a tier of government could wield in any federal constitutional regime<sup>43</sup>. It was this history that made the 1976 Local Government Reforms recognise local government as a tier of government<sup>44</sup>. Introducing the local government reforms of 1976, it was posited that 'the Federal Military Government has therefore decided to recognise local governments as the third tier of governmental activity in the nation. Local Governments should do precisely what the word government implies i.e., governing at the grassroots or local level'<sup>45</sup>.

The definition of 'local government' in the 'Guidelines for Local Government Reform', 1976, in Nigeria is another strong argument for the tier existence of local government in Nigeria<sup>46</sup>. The 1979 Constitution provisions such as sections 3(2) which provided for areas of states of the federation which were local government areas, 7 which provided for the establishment of local governments and their functions, 8 which provided for local government boundary adjustment and 149 which provided for share of local governments' revenue from the 'Federation Account' were founded on this local government tier premise. The argument that other federations of the world do not recognise local government as a tier of government, perhaps in tandem with ideal federalism, has its major setback in the decision of the court in *A.G. of Abia State v. The A.G. of the Federation*<sup>47</sup>; and also the arguments of scholars of western and developed nations' origin against duo legged federalism. The summary of the Tenth Amendment to the American Constitution as it affects local governments is that 'powers not delegated to the United States by the constitution, nor prohibited to the states, are reserved to 'the states or to the people.' Barron opined that local autonomy flourishes in the United States<sup>48</sup>. He has advocated for a provision for local government constitutions in the federal constitution so that the United States should run a trio-legged federal structure in which the federal, states and local government constitutions shall exist side by side<sup>49</sup>. Prior to Barron's work, Eaton had maintained that by the American Constitution, cities had the right to self-government<sup>50</sup>. Similarly, Sullivan sees the 'Tenth Amendment' as 'effectuating' popular sovereignty viewed from the concept of the American bill of rights that made repeated reference to 'the people'<sup>51</sup>. Redlich made his contribution far back 1962. He posited that the last phrase of the 'Tenth Amendment' singles out a bundle of 'powers' neither at the disposal of the federal nor state government<sup>52</sup>. Referring to local self-government as third level of sovereignty, Sullivan argued that the 'Tenth Amendment' would ensure that people have control over local government as against state control<sup>53</sup>. These all the more justify the tier existence of local government in the Nigerian federation and prove of agitation for same in the United States federation.

## 7. The Apparent Non-Tier Status of Local Government in the 1999 Constitution of Nigeria

<sup>41</sup> *Knight Frank and Rutley (Nig.) Ltd. v. A. G. of Kano State* [1985] NWLR (pt 6) 211.

<sup>42</sup> Nwabueze (n10) p. 157.

<sup>43</sup> Native Authority Ordinance 1916, Cap. 48, Laws of the Federation of Nigeria, 1948 s.67 and later Cap. 140, Laws of the Federation of Nigeria, 1951, Native Authorities could establish a police force.

<sup>44</sup> T. I. Ejenavwo, *Nigeria at 50: Historical Epochs* (Kaduna: Risafu Publishing Company, 2010) p. 282

<sup>45</sup> Brigadier Yar'adua S. Musa [of blessed memory] in his foreword, *Guidelines for Local Government Reform* (Lagos: Government Prints, 1976).

<sup>46</sup> Quoted by A. Zoaka Yusuf & D. Saleh, *Issues in Local Government Administration in Nigeria* [Kaduna: Joyce Publishers, 2010] p. 5. See also P. C. Akpan, *Modern Local Government Administration in Nigeria* (Kaduna: Baraka Press and Publishers Ltd., 1984) p. 27.

<sup>47</sup> [supra].

<sup>48</sup> B. David 'A Local Critique of the New Federalism' (2001) 51 *Duke L. J.* p. 377.

<sup>49</sup> B. David 'The Premise of Cooley's City: Traces of Local Constitutionalism', (1999), 147 *U.P.A.L. Rev.* p. 600.

<sup>50</sup> E. M. Amasa, 'The Right to Local Self-Government', [1900] 13 *HARV. L. REV.*, p. 441.

<sup>51</sup> Jake (n34) p. 1937.

<sup>52</sup> R. Norman 'Are There Certain Rights Retained by the People?' [1962] 37 *N.U.L.R.V.* p. 807.

<sup>53</sup> Jake (n34).

The wide states' legislative competence on financial and other matters of local concern in section 7(1) of the constitution of Nigeria 1999 may lead to the delusion that local governments exist or should exist at the mercy or as appendages of states<sup>54</sup>. Courts have never been reluctant to declare states' laws allowing for caretaker committees at the local government level as unconstitutional for violating section 7(1) of the constitution. In *Atoshi and ors. v. A. G. of Taraba State and ors.*<sup>55</sup>, the Governor of Taraba State truncated the tenure of democratically elected council members in the state. Section 118 (c) of the Local Government (amended) Law of the state<sup>56</sup> gave the governor power to dissolve councils and conduct elections within three months to fill the vacancies. It was argued that section 118(c) was *vires* the Nigeria Constitution, 1999 section 7(1) because it had provision for the conduct of elections within three months and therefore justified the conducts of the Taraba State Governor and the House of Assembly. Rejecting this argument the court remarked: 'The culture of impunity must give way to the culture of integrity in accordance with the spirit of the Constitution of the Federal Republic of Nigeria, 1999 in order for democracy to mature and thrive as it cannot be a learning process *ad infinitum*'. Taking a swipe at the violation of the Nigerian Constitution, 1999, section 7(1) in *Eze v. Governor of Abia State*<sup>57</sup>, the court remarked that '...the State Independent Electoral Commission established under section 197 of the Constitution should exercise his mandate as spelt out in Part II of the Third Schedule to organise, undertake and supervise all elections to Local Government Councils within the State....'

The last effort to wipe away every doubt about the tier status, independence/autonomy of local government in Nigeria was re-enacted by the National Assembly in its constitutional amendment drive in 2016. Section 2 of the 'Bill for an Act to further Alter the Provisions of the Constitution of the Federal Republic of Nigeria, 1999 and for other Matters concerned therewith' proposed amendments to section 7 of the constitution by curtailing the wide power of states. The Bill<sup>58</sup> prescribed tenure of four years for local government council members; it created the council and its leadership, the offices of the Chairman and Vice-Chairman. Section 43(b) of the Bill proposed the amendment of section 162 of the constitution by replacing subsections (5) and (6) with a new subsection (6) that provides for the payment of local government funds directly to an account to be opened by each local government for that purpose and also expenditure from such account to be done as provided in a byelaw enacted by the local government. Section 49 of the Bill proposed the amendment of section 197 of the constitution by taking away the powers of States' electoral bodies away and leaving the Independent National Electoral Commission with responsibility of conducting local government elections. Finally, section 64 of the Bill proposed the amendment of section 318 of the constitution to include the definition of a local government Chairman, council, byelaw, councillor, supervisor among other things to seal provisions for local government and its organs as it is provided for states and the federation. Unsurprisingly, states voted against the proposed amendment which would have been the final seal to the existence of local government as a politically and economically stable tier of government that would have been a model for other federal states of the world.

The apparent 'unlimited' powers of the second tier of government in Nigeria over local governments, especially in the area of the management of the State Joint Local Government Account<sup>59</sup> (SJLGA), is one factor that may lead to the erroneous conclusion that local governments are just appendages of states. Funds in these accounts are held of local governments by states on trust just as the Federation Account is managed by the Federal Government as a trust<sup>60</sup>. If these funds are held of local governments as trustees by states, there shall flow from this trust relationship the following obligations: The states are not supposed to put themselves in a position that their interest

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<sup>54</sup> Abdulhamid & Chima (n37).

<sup>55</sup> [2012] All FWLR [Pt. 635] 352 at 386. See also *A. G. Benue State v. Umar* [2008] 1 NWLR [Pt. 1068] 311; *A. G. of Plateau State v. Goyol* [2007] 16 NWLR [Pt. 1059] 57.

<sup>56</sup> Taraba State, Local Government (Amendment) Law No. 12, 2009.

<sup>57</sup> [2014] 60 NSCQR 407 at 451,452. Reported also in [2015] All FWLR [Pt. 791] 1399 at 1340 paragraph F-G. Per Hon. Akaahs JSC.

<sup>58</sup> Proposed section 7(a)-(z).

<sup>59</sup> Constitution of Nigeria, 1999, s.162 (5) and (6). See also Ambrose Imoode, 'Historical Evolution and Challenges of Local Government Administration in Nigeria' in Haruna Dabin (ed) (n9) p. 89 at pp.94 and 95.

<sup>60</sup> *A.G. of Bendel State v. Federation and ors.* [1983] All NLR 208 at 225.

would conflict with their trust responsibility<sup>61</sup>. In *Peyton v. Robinson*<sup>62</sup>, a trustee that had made payment to a beneficiary was held to be incapable of recovering his debt from the beneficiary from the said trust money. Secondly, the states would be in breach of their duty as trustees if they invest the proceeds of the joint account in any way without disclosing the gains of such investments to the beneficiaries. In *Prothere v. Prothere*<sup>63</sup>, it was held that a husband that held a leasehold interest belonging to him and his wife should hold the freehold interest that crystallised from the previous interest in trust for the two of them i.e. husband and wife. The culture of disobedience to court orders by states on matters of local government and the failure of the latter to litigate in search of redress in the days of such violations of either court orders or constitutional provisions have made it appear that states' powers on local governments are at large. Conscious of their wrong doings, state governments take insulation measures against liabilities for such violations especially of the constitutions by getting local government council chairmen to sign consent for the deduction of their funds for various activities<sup>64</sup>.

### **8. The Gains of the Tier Status of Local Government in Federal Constitutions**

It has been argued that 'the independence demanded for local government councils... was being demanded...to terminate the status of local government as an agency of the state government, and to establish it as a government existing separately from, and independently of, the state government'<sup>65</sup>. One of the gains of federalism is the alleviation of the fear of domination of any group by another<sup>66</sup>. The sense of security from domination would be higher if the levels of government in a federation are increased to three. The citizen is given a three stage opportunity to be elected or be appointed i.e. local government, state or the federal level. A third tier reduces grievances that may arise due to lack of appointments at the first two levels of any federation. There is the enhancement of development along ethnic/tribal and cultural lines. The southern senatorial district of Kaduna State has over twenty tribes. The existence of a third tier of our federation with representatives from most of these groups would enhance byelaws and other development projects channelled in accordance with the needs of these groups<sup>67</sup> in a manner that would be more effective than if carried out from the capital city since people with better understanding of local affairs would serve at the grassroots<sup>68</sup>. There would be rapid response to security situations if local governments exist as the third tier of government with power over the security system within their domains<sup>69</sup> in any federal state<sup>70</sup>. The chairman of a local government is closer to the grassroots than a governor who resides in the capital city of a state. Security complaints would be laid on his table easier and faster than that of the governor; and of course, the response would be faster. The existence of a third tier in a federation would provide the training ground needed for future leaders. In Abia state, given its local government presidential system of government legal framework<sup>71</sup>, a person who has served as a councillor at the local government level would not find the proceedings of the state House of Assembly or even the National Assembly strange when he graduates there.

### **9. The Trio-Tier Federal Structure: The Unfounded Fear of the Duo-Tier Federal Advocates**

One of the grounds for rejecting the tier status of local governments in federal states is that this grassroots tier would come to relate with the federation in the same way states do<sup>72</sup>. This fear was rendered unnecessary by the

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<sup>61</sup> O. F. Emiri, *Law of Trusts and Trustees* (Lagos: Jeroilromah Publishers, 1999) p. 417.

<sup>62</sup> (1823) 1 L.J. CH 191.

<sup>63</sup> (1968) 1 WLR 519.

<sup>64</sup> This is mostly for what is referred to as joint projects between states and their local governments.

<sup>65</sup> Nwabueze (n10) p. 157.

<sup>66</sup> Federal Government of Nigeria, *Report of the commission appointed to enquire into the fears of minorities and the means of allaying them* (London: Her Majesty's statutory office, 1958).

<sup>67</sup> Mowoe (n23).

<sup>68</sup> Ibid.

<sup>69</sup> A. A. Atere, 'Problems of Conflict Management in a Multi-Ethnic Society' in Haruna Dabin (ed) (n9) p.158 at 162. See also I. Shu'aibu & Y. Adadu 'Ensuring and Enduring National Security Through Good Governance at the Local Government Level' in Haruna Dabin(n9) p. 181 at 182-185.

<sup>70</sup> J.K. Obaro 'Overcoming Emerging Challenges in Today's Local Government Administration' in Dabin Haruna(n9)p.127 at pp.141 and 142.

<sup>71</sup> Cap. 25.

<sup>72</sup> (n9) pp.156 and 157.

court in *Nkwocha v. Governor of Anambra State*<sup>73</sup> when the Court held that ‘the bedrock of federalism lies in each tier of government being a master in its own domain.’ There is the application of tier checks and balances in a federal system as it is in the operations of organs of government. For the purpose of local government area creation under the 1999 Constitution of Nigeria, tier check was demonstrated thus:

In other words the State law cannot take effect without or before a Federal Law enacted pursuant to section 8(5). This must be so because we cannot afford to wake up one morning to discover that a State Government with its House of Assembly have converted every village or hamlet in their state into a Local Government [Area]. The National Assembly must be and is part of the exercise<sup>74</sup>. (Emphasis supplied).

There may also be the argument that tier confrontation could be avoided or at least mitigated with only two levels of government. Angwe once described such conflict situations as ‘nerve flexing moments between the state legislatures and local government executives...’<sup>75</sup> Whether a federal constitution is a dual or tripartite arrangement, it should be founded on the principle of constitutional co-operation; but more importantly, rule of law. The mind of the federal government concerning the need for tier co-operation between local governments and states in Nigeria was bared thus: ‘It is important that local and state governments should see themselves as partners in progress, the two tiers of government are expected to inter-relate harmoniously, complement each other’s efforts and stoutly resist the temptation to engage in futile confrontations or wasteful duplications’<sup>76</sup>. (Emphasis supplied). The three levels shall flow like a bridal train along the isle with courts of law serving as officiating ministers to ensure that the bride, bridegroom, bride maid(s) and best man each remain within the limits of his/her role<sup>77</sup>. Section 2(1) of the Constitution of the Federal Republic of Nigeria, 1999, makes the Federation of Nigeria a ‘sovereign state’ to the exclusion of the other constituents of the federation. This legal position was judicially endorsed in *A.G of Abia State v. A.G. of the Federation*<sup>78</sup> where the court held that ‘In federalism, the component states do not play the role of errand boys. The other extreme is also true and it is that they do not exercise sovereignty, which only belongs to the nation as a sovereign entity’.<sup>79</sup> (Emphasis supplied). In the face of the apparent lordship of the centre suggested above, there is the judicial caution that the constituents are not errand boys.

## **10. The Supremacy of the Constitution**

In the Canadian federation, proposals for constitutional provisions for local governments would be viewed with suspicion by the constituent units due to the history of that federation<sup>80</sup>. Such fear is unnecessary when the constitution would prescribe the limits of each tier of government. It is not the universal accepted theories of political science that determine the ‘go’ and ‘no go’ areas of each tier of government but the constitution of the state. In the words of the Supreme Court of Nigeria: ‘federalism’ may be knit in theories of political science, it conveys different meanings in different Constitutions, as the constitutional arrangements show...’<sup>81</sup> (Emphasis supplied). The above makes the fear of any constituent unit such as those of the Canadian Federation; the hoary federal school of thought amongst others, unfounded.

## **11. Conclusion and Recommendations**

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<sup>73</sup> [2001] FWLR [Pt. 48] 1386 at 1410 paragraph H. See also *A. G. of Ogun State v. The A. G. of the Federation* [1982] 3 NCLR 166.

<sup>74</sup> *A. G. of Lagos State v. The A. G. of the Federation* [2005] All FWLR [Pt. 244] 805 at pp. 869-870 paragraph E-A. The Nigerian Constitution, s.9, makes the amendment of the provisions of the constitution the joint responsibilities of the states and federal legislatures. None can do it single handed.

<sup>75</sup> A. R. Bem, ‘The Legal Relationship Between the Local and State Governments Under the 1999 Constitution of the Federal Republic of Nigeria’, in I. I. Gabriel, ‘*New vitas in law*’ (ed) (Jos: New World Publishers Ltd., 2000) p. 371.

<sup>76</sup> O. O. Olabosun (n15) p. 17.

<sup>77</sup> *Nkwocha v. Governor of Anambra State* [supra].

<sup>78</sup> [2006] 28 NSCQR 161.

<sup>79</sup> Ibid at p. 212 paragraph B-C.

<sup>80</sup> McCullough (n1).

<sup>81</sup> *Federal Republic of Nigeria v. Anache* [2004] 17 NSCQR 140 at 183 paragraph E-F.



The firm grip of local governments by higher tiers of government does not appear to be a feature of the federation of Nigeria only but also of older federations such as Canada<sup>82</sup> and the United States of America<sup>83</sup> and even the unitary state of Britain<sup>84</sup>. The Nigerian National Assembly has come to the realisation of the utmost importance of this partner in progress and has been making efforts to liberate it from every apparent domination by states through constitutional amendment proposals<sup>85</sup>. The states on the other hand have fought relentlessly to maintain the status quo as is the case in other federations. The emancipation of local government from the domination of any tier of a federal state should be taken by all as a battle that must be fought and won because of the advantages that shall consequently accrue. The Nigerian Federation however, especially under the Babangida administration has provided an example that other federations of the world are enjoined to emulate.

The 'loss' of the tier identity of local governments in the Nigerian Federation is partly due to the operation of the SJLGA<sup>86</sup>. This account is managed by the states as an extension of states' funds from the 'Federation Account' and not as trustees of these funds for the benefit of their local governments<sup>87</sup>. The abolition of this account by constitutional amendment is the surest way out of this difficulty. Where a constitutional amendment as above recommended cannot be achieved because of the negative attitudes of states as has been the case in Nigeria, a judicial remedy that must be enforced becomes unavoidable. This recommendation finds a sound footing in the cautionary remarks of the court in *A.G. Abia State and 2 ors. v. A.G. of the Federation and 35 ors.* to this effect:

...any person who is at the corridors of Local Government finances or funds or in some proximity with such finances or funds or sleeping with them and sees this judgment as a victory in the sense that he had the freedom of the air to steal from the finances or funds, should think twice and quickly remind himself that the two anti-corruption bodies, the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), are watching him very closely and will, without notice, pounce on him for incarceration after due process. But this is not as serious as God's law which **says** he will go to hell and he will certainly make hell. This is not a curse. God's law does not lie because God is not a liar.<sup>88</sup>

Efforts to socialise office seekers to the states' assemblies who have always voted against constitutional amendments for the 'autonomy' of local governments may bring them on the same page with the National Assembly that has always been in the fore front of passing bills to amend the Constitution<sup>89</sup> to ensure the tier effect of local government in Nigeria. The National Union of Local Government Employees (NULGE) and the Association of Local Government Chairmen of Nigeria (ALGON) are bodies that have been more on the side of complaints on the irregularities of States in administering the SJLGA but who don't call to question these irregularities on financial matters before courts. Litigation is the bite that is needed to make their bark effective. Other federal states of the world should borrow a leaf from the constitutional provisions for local government in Nigeria and make improvements along the lines of the above recommendations and arguments above.

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<sup>82</sup> McCullough (n1).

<sup>83</sup> *Hunter v. City of Pittsburgh* (supra).

<sup>84</sup> H. Elcock, *Local Government Policy and Management in Local Authorities* (3<sup>rd</sup> edn London: Routledge Publishers, 2005) p.185.

<sup>85</sup> The last was defeated by states' vote in 2016.

<sup>86</sup> Section 162 (5) of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>87</sup> FGN 'Report of the Technical Committee on the Review of the Structure of Local Government Councils in Nigeria, Volume 1, Findings and Recommendations' (Abuja: National Assembly Press Ltd., 2003) p. 40, a state was found to have given less than 24 per cent of money due to them from the Federation Account.

<sup>88</sup> [2006] 28 NSCQR 161 at 260.

<sup>89</sup> This efforts were contained in Bill number HB1605588 sponsored by Hon. Afe Olowo okere for the amendment of section 162 Of the Constitution in 2016. Rt. Hon. Emeka Ihedioha and over forty other House of Representatives members in 2013 jointly sponsored a Bill, 'The Constitution of the Federal Republic of Nigeria, 1999 (fourth Alteration) Bill, 2013' for the amendment of the 1999 that would have secure the tier status of local government and free them for the shackles of states. All these Bills passed through in the two chambers of the National Assembly but were defeated by States' Assemblies' votes.