



Local elections or not? Nigerians settle in the courts

An important Supreme Court decision in Nigeria ended an impasse on the timing of elections to local councils.

THEME III: THE ASSIGNMENT OF RESPONSIBILITIES AND FISCAL FEDERALISM

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Local government in Nigeria has gone through many phases. During the colonial phase, it was merely an agent of the central government. It had no identity of its own. At best it was the voice of the central government at the local level. In the immediate post-independence period, local government was in a state of flux. Some Nigerians attempted to make it an instrument of development while others only saw it as an instrument of management.

But the problems that plagued local government made the realization of the objectives difficult. The most important of those problems were finance and managerial capacity. In a way, both are related; without funds, competent staff cannot be attracted.

Early reforms

In the 1970s, Nigeria had a financial windfall from oil proceeds, the revenue from which made the restructuring of local government possible. In 1976, Nigeria moved ahead to create a third tier of government at the local level. The federal government reinforced this decision by granting 100 million Naira to the local governments of Nigeria. The grant helped make the local governments viable and able to perform the statutory functions allocated to them.

This made a great difference to local government institutions in Nigeria, particularly because local governments' internally generated revenues were very low. But it also created a new source of possible intergovernmental conflict because the extension of federal grants to local governments necessitated federal overview on how the money was to be spent.

After the restoration of democracy

The 1999 Constitution of the Federal Republic of Nigeria addressed the issue of intergovernmental relations in several

of its provisions. Although federal grants had been given to local governments since 1976, the states were still in control of the local governments. The 1999 Constitution enshrined this when it stated: "the government of every state shall, subject to Section 8 of this Constitution, ensure their existence under the law which provides for the establishment, structure, composition, finance and functions of such councils."

Unfortunately, the Constitution itself is clumsy. Item 11 of the concurrent legislative list appears to have contradicted Section 7, which explicitly placed local government under the purview of the state government. It states "the National Assembly may make laws for the federation with respect to the registration of voters and the procedure regulating elections to a local government."

Local governments in Nigeria had been elected in 1999 under a law that stipulated a three-year tenure. On the other hand, the Constitution prescribed a four-year tenure for the state and federal governments. The Chairmen of the local governments felt that there was need for symmetry and equity in the tenure and advocated a 4-year tenure. In order to realize this goal, they formed the Association of Local Governments of Nigeria.

The Association lobbied the National Assembly, which ultimately passed the Electoral Act approving the extended tenure. When state governments felt that this was a breach of Section 7 of the Constitution, the thirty-six states of the federation took joint action at the Supreme Court to invalidate that section of the Electoral Law. In a landmark judgment, the Supreme Court declared that the National Assembly was incompetent to legislate on the tenure of local governments, as that was a contravention of Section 7. This judicial review is one of the most important

decisions of the Supreme Court in many years.

Effects of the Court decision

The Court decision meant that the tenure of local governments ended on May 29, 2002. Unfortunately the Constitution did not envisage a situation in which the local governments could be dissolved without a successor government in place. That situation would create a vacuum, and in order to avoid the vacuum, either an election must be held or a transition committee must be put in place to run the affairs of the local government.

The first option (holding an election) raised some difficulties – arising from the interlocking arrangement that was established in the Electoral Law. Although Section 197 of the Constitution provided for State Independent Electoral commissions to conduct local government elections, the power to prepare the register of voters was vested in the Independent *National* Electoral Commission.

State Commissions cannot conduct any election unless the National Commission has produced the register of voters.

As things stood after the court judgment, the political party controlling the federal government did not control fifteen of the state governments. For that reason, the National Commission, which is a federal body, felt it should facilitate local government elections in such states. This being an undesirable option, they instead stalled the registration of voters. The National Commission argued that the federal government had failed to provide money for the registration. In response, state governments argued that the existing register of voters should remain valid until another register is provided.

They buttressed this argument by saying that since the National Commission had conducted by-elections with the existing

register, local government elections could also be conducted with the same register. At the end of the debate, the National Commission agreed that the registration of voters should be carried out to enable the states to hold the local government elections.

The second problem, however, remained. Section 7 of the Constitution, which had been cited by states to justify their control of local governments, is now being cited to prevent them from appointing transition committees. The relevant portion states "the system of local government by democratically elected local government councils is under this Constitution guaranteed". But transition committees are not elected and they therefore constitute a violation of the Constitution.

Some vocal members of the Association of Local Governments insist that they should remain faithful to the Constitution and refuse to hand over their local governments to unelected transition committees. The situation has all the trappings of a possible constitutional crisis.

Obasanjo steps in

The President of the Federal Republic of Nigeria, Chief Olusegun Obasanjo, seized the initiative by calling a meeting of all the State Governors to deliberate on the political dilemma. It concluded that the local government councils could be dissolved on May 29, 2002 in substantial compliance with the decision of the Supreme Court.

In addition, the Governors and Obasanjo decided that the time was too short to hold elections for local councils and recommended that the elections be held on August 10, 2002. The National Electoral Commission was instructed to carry out the registration of voters before that date.

Finally, the meeting of the State Governors and the President agreed that transition committees should be appointed to bridge the period between the end of the tenure of the outgoing councils and the elections of new councils. At that point, the issue appeared to have been resolved.

Subsequent events and pronouncements, however, showed that it was still a live issue.

The Minister of Justice and Attorney General of the Federation, Mr. Kanu Agabi, disagreed with the decisions reached at the meeting and declared that it was in contravention of the Constitution. Some members of local governments' association continued the resistance in the same vein and headed for various high courts for an injunction against the appointment of transition committees.

The Abuja high court restrained state governments from appointing transition committees. Similarly, several state High Courts restrained the state governments. The Governors insisted on appointing transition committees because that was what had been approved at the President/Governors' meeting.

The Supreme Court decision determined that it would be unconstitutional to extend the tenure of local governments. Though the Governors argued that the antics of the Association of Local Governments and the exploitation of legal technicalities must not be allowed to override the judgment of the Supreme Court, it later turned out that all states had appointed transition committees following the expiration of tenure of the local government councils.

The federal government did, however, extend the tenure of the six Area Councils in the Federal Capital territory.

Another federal commission gets in on the act

Even when one would think that the constitutional crisis was over, the Revenue Allocation and Mobilization Commission kept on the struggle. This Commission still held the view that transition committees were in contravention of Section 7 of the Constitution. It therefore argued that it would not release federal grants to local governments run by transition committees. This meant that only the Area Councils in the Federal Capital Territory would qualify for the grants.

There is no provision for the extension of the tenure of local governments councils in the law establishing them and the Constitution does not even make provisions for the extension of the tenure of the National Assembly except when the country is at war and the territory of Nigeria is deemed to be physically

involved and the President considers that it is not practical to hold elections (Section 64 (2)). In that light the extension of the tenure of the (federal) Area Councils could be considered equally unconstitutional.

However, it was not necessary to test this argument in the courts because the Revenue Mobilization and Allocation Commission later rescinded its decision to withhold federal grants to the local councils on the grounds of the unconstitutionality of Transition Committees.

The problem posed by the tenure of the local governments assumed very high political visibility – for several reasons. First, local governments constitute the political bedrock of any nation. The political parties felt that if the states were allowed to conduct the local elections they would have had undue influence.

Second, local government machines are critical to the organization and administration of future elections. It is believed that this will lead to a kind of governmental incumbency that can create an electoral advantage.

The event described here demonstrates certain issues about the political behaviour of Nigerians, notably what for a long time has been identified as political brinkmanship. Nigerians are known to disagree violently over issues, but to eventually reach an abrupt agreement. The about-face often puzzles political observers.

Nigerians have now learnt to exploit the judicial process laid out in the Constitution. The recourse to the courts is a crucial development in Nigerian politics.

State Governors, irrespective of their political affiliations, agreed to challenge the electoral law in court. This is a particularly welcome political development because it is symptomatic of the rise of political consensus in defense of the Constitution.

On the other hand, the actions of the local governments' association showed that they did not accept the principles of the division of powers enshrined in the Constitution. These ideals can only be entrenched when the people have the opportunity to face the challenge from time to time. ☺