

Unfederal Practices among Nigerian Governments: Implications for Good Governance and Sustainable Development

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Abstract

That federalism is ‘one of the best known and tested strategies for managing territorially delineated diversity’ is perhaps not contestable. Federalism varies from place to place, and from time to time, and the federalness of a system as well as its suitability and viability can only be determined by relating the system to the nature of the plural society it serves at a given point in time (Osaghae, 2006). However, where it is practiced faithfully federalism accords a system a dual advantage of managing deep seated diversity as well as providing a tendency for rapid development to all the nooks and crannies of the territory under federal practice. Federalism affords local (territorial, regional, provincial, state, or municipal) units of government, as well as a national government the opportunity ‘to make final decisions with respect to at least some governmental activities and whose existence is specially protected’. In a fundamental sense, this decentralization attribute of federalism creates opportunities for ‘separate self-sustaining centres of power, prestige and profit’ with a high likelihood of translating into sustainable development. In other words, ‘it is not by the concentration of powers, but by their distribution, that good government is effected. We are in total agreement with this observation.

Be that as it may, the operation of federal system of government in Nigeria since demise of first republic (1960-66) has been characterized by serious anomalies that authors and scholars have coined such words as ‘quasi federal’, ‘military federalism’, ‘unitary federalism, etc, in describing Nigerian system of federalism. It is even contended that ‘the federal framework in Nigeria from inception in 1954 has been fraught with a number of anomalies that tend to make federal practice in the country rather problematic’ This is in spite of wide acknowledgment that a federal system is more suitable for Nigeria than any other system. Among such unfederal practices are hyper centralization of power and resources, increasing fiscal and governmental dependency of the lower tiers of government, the over bearing posture of the federal centre, uncontrollable overlapping jurisdictions by tiers of government, a total lack of autonomy by the organs and tiers of government, etc. all of which collectively and individually erode the concept of co-ordinate supremacy, a critical element of federal system. Thus, by many accounts there is subversion of federalism in Nigeria, and this has constituted the greatest threat to Nigeria’s unity and survival as a nation-state, to its lack of democracy and has continued to undermine efforts at achieving sustainable development.

This paper examines and documents the sources, causes, and consequences of all unfederal practices in Nigeria since post 1966 era. By the nature of this topic, secondary data sourced from library, internet sites, and government publications are mainly used in this paper, and content analysis is used in analyzing the data.

Keywords: *Unfederal practices, Nigerian Governments, Good Governance, Sustainable Development*

Introduction

Nigeria, like many other countries across the globe is a culturally/ racially divided society with entrenched inequalities. While Nigeria’s population is estimated at slightly over 140 million (2006 Population and Housing Census), the country is estimated to have between 250 and 400 ethnic groups depending on the criteria used¹. Suberu (2000) asserts that Nigeria is one of the most ethnically diverse countries in all regions and climes of the world, and that some of the ethnic groups are bigger than many states of contemporary Africa. These ethnic groups are broadly divided into ethnic ‘majorities’ and ethnic ‘minorities’. The numerically – and politically – majority ethnic groups are the composite Hausa-Fulani of the north, the Yoruba of the southwest, and the Igbo of the southeast. The three majority ethnic groups constituted 57.8% of the national population in the 1963 census².

According to Mustapha (2007), the numerical and hegemonic strength of these three ethnic groups within the Nigerian federation has meant that Nigeria has a tripod ethnic structure, with each of the three majority ethnic groups constituting a pole in the competition for political and economic resources. He observes, rightly, that the ethnic minorities are forced to form a bewildering array of alliances around each of the three

¹ A total of 374 ethnic groups were identified by the eminent sociologist Otite (1990).

² For purely political reasons, the 2006 Population and Housing Census did not contain variables on ethnicity and religion of Nigerians. This made it difficult to estimate the composition of different ethnic groups in Nigeria.

dominant ethnicities. Tripodal ethnic structures are inherently unstable, especially compared to countries like Tanzania which has a fragmented ethnic structure. In Tanzania, no ethnic group constitutes more than 12% of the population (Nyang'oro, 2006), so alliance building is the norm in politics. By contrast, ethnic politics in tripodal Nigeria is often conflictual as each of the three hegemonic groups tries to build up sufficient alliances to ensure its preponderance in government, or to prevent its being marginalised by competing alliance. Elsewhere, Mustapha also notes that "the interplay between this tripodal ethnic structure on the one hand, and administrative divisions and communal identities on the other, has led to eight major cleavages in Nigerian political life"(Mustapha, 1986), the most important of which are: the cleavages between the three majority groups; between the three majority ethnic groups on the one hand and the 350-odd minority ethnic groups on the other; between the north and south; between the 36 states of the federation and the six zones – three in the north and three in the south – into which they are grouped; and finally, between different religious affiliations. We agree completely with this apt observation about structure and inter-play of variables of political powers in Nigeria.

In the words of Ojo (2009), it is not a surprise that ethnic groups in Nigeria are always in conflict and competition over resources. According to him, this is not unexpected in ethnically defined constituencies. He argues that by definition, ethnic groups compete for the strategic resources of their respective societies. This occurs because ethnic groups are socio-cultural entities which, while inhabiting the same state, country, or economic area, consider themselves biologically, culturally, linguistically, or socially distinct from each other and most often view their relations in actual or potentially antagonistic terms. In an important sense, the feeling of antagonism among ethnic group is often fuelled by fear of real or perceived marginalization.

Defining a Federal Government

A federal form of government has a multiorder structure, with all orders of government having some independent as well as shared decision-making responsibilities (Shah, 2009). Thus, a federation is simply a multilevel system of government in which different levels of government exist, each of which has some independent authority to make decisions within its jurisdiction. Federalism represents either a "coming together" or a "holding together" of constituent geographic units to take advantage of the greatness and smallness of nations. More recently, Robert Inman (2007: 530) noted that "the word 'federal' has come to represent any form of government that brings together, in an alliance, constituent governments each of which recognizes the legitimacy of an overarching central government to make decisions on some matters once exclusively the responsibility of individual member states" (Shah, 2009). "Coming together" has been the guiding framework for mature federations such as the United States, Canada, and, more recently, the European Union.

The alternative "holding together" view of federalism, also called "new federalism," represents an attempt to decentralize responsibilities to state-local orders of government with a view to overcoming regional and local discontent with central policies (Shah, 2009:6). This view is the driving force behind the current interest in principles of federalism in unitary countries and in relatively newer federations such as Brazil and India and emerging federations such as Iraq, Spain, and South Africa.

A federal form of government promotes decentralized decision making and, therefore, is conducive to greater freedom of choice, diversity of preferences in public services, political participation, innovation, and accountability (Shah, 2009:6). It is also better adapted to handle regional conflicts. Such a system, however, is open to a great deal of duplication and confusion in areas of shared rule and requires special institutional arrangements to secure national unity, ensure regional equity, and preserve an internal common market.

Federal countries broadly conform to one of two models: *dual federalism* or *cooperative federalism*. Under dual federalism, the responsibilities of the federal and state governments are separate and distinct. According to Riker (1964: 11), under such a system, (1) "two levels of government rule the same land and the people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee of the autonomy of each government in its own sphere." Under cooperative federalism, the responsibilities of various orders are mostly interlinked. Under both models, fiscal tiers are organized so that the national and state governments have independent authority in their areas of responsibility and act as equal partners. National and state governments often assume competitive, non cooperative roles under such an arrangement. Dual federalism takes either the *layer cake* or *coordinate-authority* approach (Shah, 2009:6). Under the layer cake model practiced in Mexico, Malaysia, and Russia, there is a hierarchical (unitary) type of relationship among the various orders of government. The national government is at the apex, and it has the option to deal with local governments either through state governments or more directly. Local governments do not have any constitutional status: they are simply extensions of state governments and derive their authority from state governments. In the coordinate-authority model of dual federalism, states enjoy significant autonomy from the federal government, and local governments are simply handmaidens of the states and have little or no direct relationship with the federal government. The working of the federations of Australia, Canada, India, Pakistan, and the United States resembles the coordinate-authority model of dual federalism.

The *cooperative federalism* model has, in practice, taken three forms: interdependent spheres, marble

cake, and independent spheres. In the interdependent spheres variety as practiced in Germany and South Africa (a unitary country with federal features), the federal government determines policy, and the state and local governments act as implementation agents for federally determined policies. In view of federal domination of policy making, state or provincial governments in this model have a voice in federal policy making through a second chamber (the upper house of the parliament). In Germany and South Africa, the second-order (state) governments are represented in the upper house of the national parliament (the Bundesrat and the Council of the Provinces, respectively). In the marble cake model of cooperative federalism, various orders of government have overlapping and shared responsibilities, and all constituent governments are treated as equal partners in the federation. Belgium, with its three territorial and four linguistic jurisdictions, has a strong affinity with this approach. Finally, in a model of cooperative federalism with independent spheres of government, all orders of government enjoy autonomous and equal status and coordinate their policies horizontally and vertically. Brazil is the only federation practicing this form of federalism.

The *competitive federalism* model is a theoretical construct advanced by the fiscal federalism literature and not yet practiced anywhere in its pure form. According to this construct, all orders of government should have overlapping responsibilities, and they should compete both vertically and horizontally to establish their clientele of services. Some analysts argue that such a competitive framework would create leaner and more efficient governments that would be more responsive and accountable to people.

Countries with a federal form of government vary considerably in terms of federal influence on sub national governments. Such influence is very strong in Australia, Germany, India, Malaysia, Mexico, and Pakistan; moderately strong in Nigeria and the United States; and weak in Brazil, Canada, and Switzerland. In the last group of countries, national control over sub national expenditures is quite limited, and sub national governments have considerable authority to determine their own tax bases and tax rates. In centralized federations, conditional grants by the federal government play a large role in influencing the priorities of the state and local governments. In Australia, a centralized federation, the federal government is constitutionally required to follow regionally differentiated policies.

Federal countries also vary according to sub national influence on national policies. In some countries, there is a clear separation of national and sub national institutions (“executive” or “interstate” federalism), and the two orders interact through meetings of officials and ministers, as in Australia and Canada. In Germany and South Africa, state or provincial governments have a direct voice in national institutions (“intrastate” federalism). In the United States, regional and local coalitions play an important role in the Congress. In some federal countries, constitutional provisions require all legislation to recognize that ultimate power rests with the people. For example, all legislation in Canada must conform to the Canadian Charter of Rights and Freedoms. In Switzerland, a confederation by law but a federal country in practice, major legislative changes require approval by referendum. Such direct-democracy provisions indirectly reinforce the decentralized provisions of public services. In all federal countries, local government influences on the federal and state governments remain un-institutionalized and weak.

Barry Weingast (2009) has advanced a theoretical concept for comparative analyses of federal systems. Titled “Market-preserving federalism”, this concept is put forth as an ideal form of federal system in which (1) multiple governments have clearly delineated responsibilities; (2) sub national governments have primary authority over public goods and services for local autonomy; (3) the federal government preserves the internal common market; (4) all governments face the financial consequences of their decisions (hard budget constraints); and (5) political authority is institutionalized (Shah, 2009). We shall apply some elements of market preserving federalism in the analysis of federal practice in Nigeria since 1954 when federal practice officially commenced in Nigeria

Unfederal Practices in Nigeria.

Albeit most classical federations have two orders of government, namely the federal and the state/provincial/regional government, yet in a few federations (Brazil, India, Nigeria, South Africa), the municipal or local order of government is also established within the constitution. Nigeria is a three-layer federation made up of one federal government, 36 states (and a Federal Capital Territory (FCT)), and 774 local government councils. Thus, the operation of federalism in the country is among these three tiers of government. In this section, we examine a number of issues that border on the relationship of these tiers of government and the attendant pervasion of federalism in Nigeria. These issues collectively define the structure, nature and character of federal system prevalent in Nigeria.

1. Over centralized governmental powers

In ideal federation, tiers of government are expected to operate as coordinate supreme and coequal. Each is expected to stay within the limit of its constitutional powers in terms of governmental responsibilities and resources to execute those mandates. Be that as it may, the operation of Nigerian system of federalism since the collapse of the first republic in 1966 has contradicted this golden federal rule. There has been considerable

overconcentration of governmental powers at the centre, thereby eroding many of the powers of sub federal units. A cursory study of the legislative list shows clearly that there has been a progressive addition to the mandates of the federal government as contained in the exclusive legislative list. For instance, this list increased from less than 30 items in the 1960 constitution to over 70 items in the 1999 constitution.

The continuous increase in the mandates of the federal government is not without justification. In the contemporary literature, it is widely argued by economists that the principles and practice of public finance which concentrates functions and power in the hands of the federal government will accelerate economic development. This, they argue, is because classical federalism creates less-than-optimum allocation of resources. Besides, economists contend that classical federalism prevents economies of scale in government and increases cost of administration. Furthermore, proponents of centralization believe that the conventional macro-economic favours centralisation and integration of fiscal powers which enables the economy to combat depression and inflation. It was in this regard that Hanson and Perloff (1965) argued that autonomous taxing borrowing and spending activities of the state and local governments collectively have typically run counter to an economically sound fiscal policy of the central government and have therefore intensified the violence of economic fluctuation. They were of the view that unless the states' fiscal systems "are planned in relation to the federal stabilisation programmes, they are likely to nullify in large measure the national counter-cyclical activities".

One clearly distinguishable feature of a federal system is that units of government operate and relate as coordinate supreme, meaning that since each derives its powers and functions from the same source, usually, the constitution; there is really no master and no servant. The Nigerian system of federalism deviates greatly from this practice. In fiscal centralism, which best describes the Nigerian situation since the period of monocentric oil economy in the 1970s, revenue allocation and fiscal policies are left at the total control of the central government. In other words, the central government makes fiscal policies and allocates revenue to constituent units on the basis of criteria decided by it. This essentially is fiscal centralism and is largely the product of a convoluted resource allocation framework, weakness of existing fiscal policies and the desire of the central leadership to assume control of resources. This is contrary to the situation in a state with fiscal federalism that ideally goes with a federal system of government. In fiscal federalism, the federal state shares fiscal policy making with the constituent units or regions/states and this includes the nature of revenue allocation. In this case, fiscal policy is devolved to the constituent units that make up the federation and they share this responsibility with the central government. More than this, fiscal federalism connotes recognition of the different contributions of each unit in a federation to the national revenue in the process of allocation (Anugwom, 2001). However, the Nigeria's system of federalism is such that contributions of sub federal tiers are insignificant to have any meaningful impact on the operation of the federal system. Essentially, this situation has been caused by a number of factors some of which are explained below:

a. The centre predominates in the allocation and control of the national wealth.

One of the major areas of the perversion of the Nigerian federal system is the overwhelming reliance of all governments (federal, states and local) on the centrally collected oil revenues. This situation was made possible because of the nature of revenue mobilization in the country which is highly central, reflecting the centralizing imperative of the military that has ruled the country for a greater part of the period of its post- colony. Thus, the long period of military rule and the interplay of ethno-regional redistributive politics have cumulatively ensured the transformation of Nigeria's fiscal federalism to that of fiscal centralism, with profound implications on the nature of sub federal autonomy and sustainable national development.

Again, in federal system of government, each level of government is expected to be allocated specific governmental responsibilities and given adequate resources to allow it discharge its responsibilities. Because this is not the case in Nigeria yet, there is a lack of correspondence between the spending responsibilities and the tax powers/revenue sources assigned to different levels of government. It is this incongruence that is often referred to as the *non-correspondence problem*. In Nigeria, most of the major sources of revenue come under the jurisdiction of the Federal Government yet lower levels of government are suppose to generate internal revenue. There is, therefore, the need to resolve the imbalance between assigned functions and tax powers.

b. Federal government's subversion of revenue allocation laws

Essentially, the federal government of Nigeria is known to be consistently subverting revenue allocation laws, with implications on the share of the sub federal units in the federation account. It is the cumulative effects of all these practices that has led to the description of Nigeria's system of public finance as that of fiscal centralism, which has been made possible because of the "continuing ability of the federal government to subvert revenue allocation laws owing to its position as the sole collector and custodian of all major inter-governmental revenues", a situation which naturally leads to financial vulnerability of the sub-national governments, especially the local governments (Suberu, 2006). Till date, a widely-accepted vertical and horizontal formula is yet to be institutionalised as both the Revenue Mobilisation, Allocation and Fiscal Commission (RMAFC) and Federation Account Allocation Committee (FAAC), the institutions established to superintend the collection and sharing of revenue in Nigeria, are characterised by political manoeuvrings (Oladeji, 2014). In particular, the federal

government is always opposed to any sharing formula proposal that purportedly reduces its allocation. This over-centralized revenue mobilization and allocation has been the basis for many of the inter governmental crisis prevalent in the country since post 1966 era.

2. *Lack of Autonomy for sub federal Governments*

As already alluded to, Nigeria operates a three-tier federal system¹. The 1999 Constitution of the federal republic of Nigeria was modelled after the American Presidential system which recognizes three tiers of government namely the Federal Government, the State Government and the Local Government. However, the operation of Nigeria federal system since demise of first republic in 1966 has been such that scholars and observers wonder if Nigeria can be correctly described as a federal republic. As the lack of autonomy affects both the state and local governments, we use one case each to illustrate the subversion of the federal system in Nigeria as follows, (i) the minimum wage issue for the state government, and (ii) the creation, existence and administration of local councils for the third tier of government.

2.a. *Minimum Wage Palaver*

The issue of fixing of minimum wage centrally by the federal government is yet another in the series of perversion of federal system of government in Nigeria. Also related to this is the issue of fixing and conduct of general election by independent National Electoral Commission (INEC). In ideal federal systems, both of these issues are essentially state matters on which the federal government is NOT expected to interfere. In Nigeria, however, federal interference on these issues are prominent and well pronounced. On the issue of the on-going negotiation for a national minimum wage, President Goodluck Jonathan, without minding the principle of federalism appeared to have coerced all the 36 state governments into reaching an agreement on the payment of this wage. The president declared that “All state governors must pay the new minimum wage”(cited in Saturday tribune, 21/5/2011:33). Indeed this presidential declaration is without prejudice to the state of financial viability and commitments of the affected states.

Expectedly, many state governors are not comfortable with this presidential, but highly *unfederal* practice which many of them described as “unsolicited trouble” (ibid). The governors therefore, and justifiably so, have demanded for an upward review of their statutory allocation if they must join the new minimum wage train. According to Lagos State governor, Babatunde Raji Fashola state governments’ share of national revenue must be increased to 42% (from the present 26.72%) if many of them will be able to pay the new wage to the workers. In his words:

“in order that the newly approved minimum wage be effective and sustained and for the states to be able to function and provide basic social services, the adoption and implementation of the recommendation to amend the revenue allocation formula was a precondition that will help the state Governors stem any labour crisis...Not all states will be able to pay the new minimum wage structure unless there is an urgent amendment of the country’s revenue allocation formula that gives more money to the States and Local Governments”(Saturday Tribune, 21/5/2011:33).

It is expected that such issues as those of minimum wage should have been left to the state government to handle. The central handling of this apparently state matter suggests that the sub federal units in Nigeria lack autonomy in sensitive matters. This is injurious to the operation of federalism and aspiration for sustainable development in Nigeria

2.b. *Creation and Existence of Local Governments Councils*

The 1999 Constitution of the federal republic of Nigeria tends to provide for a full fledge democratic Local Government system, when in section 7(1) it provides that:

The system of Local Government by democratically elected Local Government Councils is guaranteed under the Constitution 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.

The 1999 Constitution did not only give the numbers of all the local government areas in Nigeria but also clearly stated the names of all the Local Government Areas in all the States in Nigeria. The implication is that all the Local Governments in Nigeria are recognized by name and are vested with juristic personality by the Constitution.

Regrettably, despite the fact that the Local Government system is constitutionally provided for as a third tier and autonomous of the other two, the Federal and State Governments have unwholesomely interfered in the operations of the local government system such that in some states, the local governments are reduced to a department of the state government. In most cases Local Governments’ statutory revenue allocation from the federation accounts are withheld unlawfully by the State Governments or Federal Government; and Local

¹ In most classical federations only the federal and the states, variously called, regions/states/cantons etc) are recognised. Indeed, there is no single mention of local government in the entire constitution of the United State of America.

Government Councils are arbitrarily dissolved without allowing them to serve out their constitutional tenure. Severally, the courts have intervened to declare some of the actions of the Federal and State Governments unconstitutional, null and void. This has greatly helped to preserve governance at the grassroots. Table 1 below contains some judicial interventions on issues concerning the existence and operations of local government in Nigeria.

Table 1: Main Judicial Interventions on Issues Concerning the Existence and Operations of Local Government in Nigeria, 1999-2007

S/N	Citation	Judgement	Grounds of Judgement
1	Attorney General, Lagos State v. Attorney General of the Federation	The supreme court declared the Local Government Area Law No 5 of 2002 made by Lagos State Government in which 57 local governments were created by breaking the existing 20 Local Government areas recognized under the 1999 constitution into 57 Local Government Councils as unconstitutional null and void	The Law in effect abolished Local Government Areas created under the 1999 Constitution by altering their names, adjusting their boundaries and dividing them into smaller units. Thus no State House of Assembly could on its own create additional local government without involving the National Assembly which would then set the necessary machinery in motion for the amendment of section 3(6) of the 1999 Constitution.
2	Attorney General, Lagos State v. Attorney General of the Federation	The supreme court declared the decision of the Federal Government to withhold statutory allocation due and payable to the Lagos State Government in respect of the 20 Local Governments is declared as null and void	The federal Government has no right whatsoever to withhold allocations meant for another order of government
3	Attorney General of Abia State & 35 Ors v. Attorney General of the Federation	The Supreme Court declared the Electoral Act made by the National Assembly in 2001 as null and void	The Act purported to legislate on the tenure of the Local Governments in Nigeria whereas that power was constitutionally reserved for the states Houses of Assembly.
4	Attorney General Plateau State v. Goyol and 8Ors and Attorney General Benue State v. Umar and 9Ors	The Court of Appeal declared the actions of the Plateau State Governor and that of Benue State Governor respectively in dissolving the Local Government Councils in those States as unconstitutional, null and void	The Laws made by the two States Houses of Assembly authorized the Governors to impede the smooth running of the Local Government Councils were inimical to the practice of federalism
5	Attorney General Abia State & 2 Ors v. Attorney General Federation & Ors	Supreme court held that the powers of the National Assembly over funds accruable to the Local Government Councils in Nigeria under sections 7(6) and 162(5) of the 1999 Constitution is only limited to allocation of such funds and it did not extend to monitoring such funds. Therefore, the Monitoring of Revenue Allocation to Local Government Act which sought to monitor the revenue allocation to the local government councils was held to be unconstitutional	Monitoring is a post-allocation matter and the National Assembly had no power to make such laws

Source: Compiled by Authors, 2011.

One major issue that has dogged the civilian administration of the fourth republic is that of the creation of local councils by some states in the federation. The immediate bone of contention which is of relevance to this paper is in connection with the allocation of funds to the newly created councils. It will be recalled shortly after inauguration of new civilian administration, and in exercise of their constitutional powers on the issue, five State Governments announced the creation of additional councils in their respective states. An interesting political

dimension was immediately introduced to the whole issue, which is the influence of party system. This is not unexpected because in many federations, party policies strongly influence intergovernmental relations. In the United States, the Democratic and Republican political parties at both national and state levels have significant linkages between them and intergovernmental relations. In others, such as Canada, the relationships are weaker. In countries where one party has control of both national and sub national governments, such as the African National Congress (ANC) in South Africa, the Peoples Democratic Party (PDP) in Nigeria, etc internal party processes can often play a significant role in managing intergovernmental issues (See Neumann, Robinson, and Robinson, (2006:69)

In obedience to party supremacy, four of the five states, namely Nassarawa, Kogi, Katsina and Niger, which were being controlled by the ruling party at the centre, the PDP, quickly reverted to the old number of local councils, but the fifth, Lagos state, which was under the control of one of the opposition parties in the country, the Alliance for Democracy (AD) refused to heed the advice of the federal government on the issue. The position of Lagos state was that it did not create any local government, but development areas, and that it followed strictly all the laid down constitutional procedure for the exercise. In other words, Lagos claimed that the creation of 37 Local Government Development Areas was based on laws validly enacted by the Lagos state house of Assembly pursuant to its legislative competence under the 1999 constitution of the federal republic of Nigeria. In the words of Fashola:

“As the head of a State Government that is committed to the highest standards of constitutionalism and legality, I regret that I am unable to accede to your request to alter the current status quo by stopping the operation of the 37 Local Council Development Areas”(Response of Lagos state Government to the Federal Government’s order that the former reverts to its old 20 LG structure as contained in request).

The Governor maintained that the laws on which the creation was done relate to (i) The creation of Local Government Areas Law No. 5 2002, (ii) The creation of New Local (Amendment) Law No 15 at 2004, and (iii) The creation of New Local Government (Amendment) (No 2) Law of 2005. Therefore, the exercise was within the ambit of the law.

Expectedly the matter became a subject of hot litigation between the two parties and the landmark judgment on the case is today referred to as the case of AG of Lagos State vs AG of the Federation (2005) 2 WRN 1. In the judgment delivered by Muhammed Uwais CJN, the Supreme Court held that:

"Having read all the provisions of the Constitution aforementioned I am satisfied that the House of Assembly of Lagos State has the right to pass the creation of Local Government Areas (Amendment) Law 2004" See AG Lagos v. AG Federation & Ors.

His Lordship further noted that:

"... the Laws are valid but inchoate until the necessary steps as provided by the Constitution are taken by the National Assembly"

This position is also supported by the judgment of Iguh JSC when his Lordship held that:

"I have therefore no difficulty in coming to the conclusion that the Lagos State Government's Law No.5 of 2002 is unquestionably constitutional and having complied with the provision of sections 7(1) and 8(3) of the Constitution." see AG Lagos v. AG Federation & Ors.

Consequently the Supreme Court held that “there is no conflict between the Laws under which the new Local Council Development Areas were created and the Constitution of the Federal Republic of Nigeria.”

However, in the period the litigation lasted, the Obasanjo-led federal government withheld allocations meant for the 20 Local Government councils of Lagos state under the guise that the state was using allocations to the constitutionally recognized 20 councils to fund the new (unrecognized) ones. Shortly after assumption of office in May 2007, President Yar’Adua’s administration, which carved for itself an administration that believes in rule of law, ordered the release of all allocations meant for the Lagos Local Government councils. This step, popular as it was, did not completely resolve the imbroglio as the same federal government, under the same President Yar’Adua demanded that Lagos state government should revert back to its original structure a few months after. As expected, the matter also dragged to the court. Thus, till date, the structure of Lagos state government is still largely a matter of contestation.

3. Resource Control Palaver.

Another issue indicative of the perversion of the federal system in Nigeria is that of control of resources among tiers of government. Again, like many other issues, this became a problem sequel to the aftermath of military rule that ended the first republic. It would be recalled that during the first republic (1960-66), the Nigerian federation functioned very well, allowing the federating regions the control of own resources, with appropriate taxes paid to the central purse. Essentially, the principle of derivation featured prominently in the horizontal revenue allocation in the first republic, and it allowed each region to receive revenue from the central government in proportion to its contribution to the centrally collected revenue. As the principle tended to give

more revenues only to states where natural resources were available, it became a highly controversial issue as some of the majority ethnic groups in Nigeria are without such natural resource as crude oil. As a result of this, it was contended that application of derivation principle tended to promote regional hostility and disunity because of the uneven distribution of natural resources across the country. Naturally, this led to over politicization of the principle of revenue allocation in the country.

The most recent development in the struggle for the control of oil resources in Nigeria was the recent Supreme Court action instituted by the Federal Government against the oil producing states with respect to the offshore/ onshore oil dichotomy. The April 2002 decision of the Supreme Court to exclude the revenue derived from offshore drilling in the calculation of the revenue attributable to the oil producing states based on the derivation principle, has failed to resolve the controversy. There arose a dispute between the Federal Government on the one hand and the eight littoral States of Akwa Ibom, Bayelsa, Cross-River, Delta, Lagos, Ogun, Ondo and Rivers States on the other hand as to the Southern (or seaward) boundary of each of these States. The Federal Government contends that the southern (or seaward) boundary of each of these States is the low water mark of the land surface of such State... [or] the seaward limit of inland waters within the State, as the State so requires. The Federal Government, therefore, maintains that natural resources located within the Continental Shelf of Nigeria are not derivable from any State of the Federation. The eight littoral States do not agree with the Federal Governments' contentions. Each state claims that its territory extend beyond the low-water mark onto the territorial water and even unto the continental shelf and the exclusive economic zone. The states maintain that natural resources derived from both onshore and offshore are derivable from their respective territory and in respect thereof each is entitled to the "not less than 13 percent" allocation as provided in the proviso to subsection (2) of section 162 of the Constitution" (Judgment by the Supreme Court, 5 April 2002).

As a way of reducing the effect of the Supreme Court verdict, the president acting on the recommendations of the committee set up to study the implication of the Supreme Court judgement sent a bill to the National Assembly seeking to abolish the dichotomy between onshore and offshore in the application of the principle of derivation (Ogbodo, 2004). However, by November 2002, the harmonised position reached by the Joint Conference of the National Assembly was that the continental shelf and the exclusive economic zone contiguous to a state of the federation shall be deemed to be part of that state for the purposes of computing the revenue accruing to the federation account from that state pursuant to the provisions of constitution of the republic of Nigeria 1999 or any other enactment. The president did not however concede to this but by January 2004 he suggested 24 nautical miles as areas onshore that the littoral states could benefit from.

Making further clarification, the president made it clear that there was not much production of crude oil beyond 24 nautical miles and he therefore suggested in the new bill 200m water depth and he further claimed that all existing producing oil areas found in the country are located within the 200 meter water depth isobath. This was eventually signed into law and it had resulted in much jubilation to the littoral states. But hardly had this been done by the Federal government than the 22 governors filed a suit at the Supreme Court against the littoral states. The 22 governors were seeking a declaration that the Onshore/ Offshore Abrogation Act enacted by the National Assembly was unconstitutional and equally that there should be a stoppage to further payments to the littoral states of the derivation benefits from offshore oil exploitations. Meanwhile, the *Guardian* opinion was sympathetic with the littoral states and enjoined the 22 governors to withdraw the suit from the Supreme Court (Anikulapo, 2004).

Conclusion

In concluding this paper, we observe that although Nigeria's federal experience is outstanding in Africa (Suberu, 2009:1; Keller, 2002:21)), yet there are numerous problems with the operation of the Nigerian system of federalism, and these problems account for the country's inability to achieve sustainable growth, development and progress 50 years after self rule. Among others, the over centralization of powers and resources and the decimation of sub federal levels, which lack autonomy in administrative and fiscal terms, and problems that surround control of resources are principal areas of contestations in the federation. The result is that Nigerian system of federalism has continued to violate all known laws of federal arrangement. Federations are expected to operate in such a way that units are coordinate with the centre, and have independent sources of resources to guarantee autonomy. This is not yet the case in Nigeria as sub federal levels, namely the state and local government councils, even though derive their powers and functions from the same constitution where the federal government derives its own, are made to function as administrative appendages of the federal government.

Nigeria's problems with operation of federalism largely reflect the structure and character of the union. Nigeria is one of the most ethnically diverse countries in all regions and climes of the world, with a population of over 140 million, and ethnic groups of between 250 and 400. Thus, the issue of political accommodation of the many ethnic groups has become central in order to avoid crisis occasioned by fear of marginalization of certain ethnic groups in the country. It is in attempt at ensuring that crises occasioned by its severe cleavages do not

consume the union that measures have been taken by governments, particularly military regimes, to enforce unity in the system. The enforced solutions to the problems of Nigeria's federalism have, unfortunately, destroyed the operations of the system, particularly in terms of over centralization of powers and resources. Be that as it may, for all its shortcomings, the fact that Nigeria has continued to exist as one indivisible entity after 5 decades of self-rule is indicative of success in its conflict management mechanisms since independence.

Recommendation:

As a way forward, this paper recommends that Nigeria should go back to the operation of 'true' federalism as was the case in the first republic, when the units operated as coordinate supreme with federal government and there was considerable decentralization of powers and resources. It is no gainsaying that the level of development Nigeria recorded at this period has remained unmatched even till date.

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