
Creation of States and Local Governments in Nigeria

BY

Samuel Akpadiagha ETUK, ESQ
Paralegal Studies Department
Akwa Ibom State Polytechnic
Ikot Osurua

ABSTRACT

After the amalgamation of the northern and southern protectorates in 1914 into a geographical and political entity known as Nigeria, the government at the center has always been responsible for the creation of sub-political entities known as regions, which later metamorphosed into states at the end of the Nigerian civil war with the introduction of the 1979 constitution. The statutory institutionalising of local governments as the third tier of government in Nigeria, in 1996, which was given constitutional backing under the 1979 and subsequently the 1999 constitutions, has exposed the inherent weakness that occasioned the fusing of people from diverse ethnic and cultural backgrounds into one. The failure of some state governments to exercise their power to create them without recourse to the National Assembly has given rise to reoccurring issues of conflict between the government at the center and state governors. Thus, this paper examines the historical evolution of state and local government creation in Nigeria and the constitutional and legal procedures for their creation. It also highlights issues influencing and militating against the creation of new local government areas in the country, while x-raying their democratic structure under the country's constitutional democracy. It recommends a strict adherence to the constitutional provisions and procedures for the creation of state and local government areas in the country.

KEYWORDS: Constitution, State, Local Government Area, National Assembly, State House of Assembly, Quorum

Introduction

The process of creating states and local governments in Nigeria dates back to pre-colonial era and can be traced to amalgamation of the North and South protectorates to form a geographical and political entity. The idea was conceived to devolve power to enable full political participation of the individual ethnic within the region. It opened avenues for effective geo-political alignment which was needed to allay the inhibited fears of domination that many ethnic groups nursed against themselves. It is important to note that the notion of decentralization came into fruition through this creation as evidenced in 1914, when North and South were amalgamated.¹

At independence on the first of October, 1960, Nigeria had three major regions which were the Northern region, made up of the entire Hausa, Fulani, Nupe and other minority tribes with similar cultural and religious affinity; Eastern region made up of the Ibo, Ibibio,

¹ Agboola Theophilus Olumuyiwa 'The Challenges of State/Local Government Creation in Nigeria: A Critical Analysis *International Journal of Politics and Good Governance*, Volume VII, No. 7.1 Quarter 2016,1.

Ijaw, Ekid and other tribes found in present day South -South region of Nigeria². The third region which was called the Western region was made up of the Yourba, Benin, Urhobo, Itshekiri and other tribes in the present day Edo and Delta State. Lagos was made the Federal Capital Territory of independent Nigeria.³ Later in 1963, the Mid-Western region was created out of Western region and this was justified by the then Premier of Western region, Chief Obafemi Awolowo as a veritable means of enhancing even development pattern in the country.⁴

The need to further decentralise government also gave rise to the creation of local government councils. Local government is a level or unit of government created by law to provide certain basic goods and services, and opportunity for political participation at the grassroots. It is the grassroots government purposely meant to fill the gap which the national and/or state government fails to fill and assist the national and/or state governments to achieve their ideas and aspirations at the grass roots level.⁵ In federal states, local government councils are normally created by federating units; examples are in United States of America, Canada, Germany, Switzerland and Nigeria (1960–1976). However, in Unitary States, such as Britain, France, Israel, they are created by laws of the national central governments.⁶

Since Nigeria attended independence, creating of local government areas have become enormously popular in the country as it is seen as means of redressing the imbalance in socio-economic development among the component units of Nigeria. As at 1976, the government created 301 local governments, by May, 1989 the numbers local governments in the country increased to 449. In August, 1990 an additional 51 local governments were created making a total of 500 local governments, 89 were further created, making 589 local governments in September 1991. In October 1996, the number of local governments rose to 768 local governments and increased steadily to 774 by 1999.

As at date, the three regions and a Federal Capital Territory at independence in 1960, have been partitioned into thirty-six states with a Federal Capital Territory and a further 774 local governments. It is instructive to note that the various military regimes which ruled the country for a considerable period popularised the creation of states and local governments in the country, as they saw it as an avenue to redress the socio-economic disparity, empower selected ethnic groups at the detriment of others and reward their acolytes and protégés.⁷

Creation of States and Local Governments in Nigeria's Constitutional Democracy.

As earlier stated, Nigeria as at independence had just three regions and a Federal Capital Territory, later four regions with the carving out Mid-Western region from Western. Over the years, the numbers of states have increased to 36 states with a Federal Capital Territory, while the local governments are 774 as at date. In spite of this bloated size of states and local governments, there have been consistent agitation for creation of additional states and local

² Auwalu Musa and Ndaliman Alhaji Hassan 'An Evaluation of the Origins, Structure and Features of Nigerian Federalism' *The International Journal of Social Sciences and Humanities Invention*, Volume 1 issue 5 2014,317.

³ Agboola, n.1, 2.

⁴ E.O. Ojo & P. F. Adebayo, 'The Politics of States', *Local Governments' Creation and Nigeria's Search for Geo-Political Balancing*, 338. <https://www.ajol.info%2Findex.php%2Fafrev%2Farticle%2FviewFile%2F41078%2F8502&usg=AFQjCNGWGrxRMx0EpOM6J-VO_ERI3X6ryA&bvm=bv.147448319>accessed 16 February,2017

⁵ Okafor, Jude Chizoba 'The Politics and Constitutional Challenges of Creating Local Government Councils in Nigeria' *African Journal of Social Sciences*, Volume 2 Number 3 (2012), 199.

⁶ *ibid*

⁷ Vande, Philip Terzungwe 'Ethnicity and the Politics of State Creation in Nigeria' *European Scientific Journal* July edition vol. 8, No.16,44.

governments along ethnic lines. Some states like Lagos, created additional 37 local government councils from its constitutionally recognized 20, making it a total of 57, without recourse to the constitutional provisions.⁸

State Creation in Nigeria Since Independence

Since its attainment of independence in 1960, Nigeria has been fragmented into regions and later states on six different occasions which are; 1963, 1967, 1976, 1987, 1991 and 1996.⁹

The creation of these states has not in any way reduced persistent cries for more. Nigeria, in 1960 was made up of three regions (Northern, Eastern and Western). Lagos was made the Federal Capital Territory of independent Nigeria. In 1963, the minority ethnic compositions who were none Yorubas got their own region; Mid-Western region, which was excised from the Western region. Attempts by the minority non Hausa Mid Belt people to also get their own state were resisted by the majority Hausa and Fulani oligarchy¹⁰.

The military coup d'état of January 15, 1966 led to the suspension of constitutional democracy in Nigeria and military rule was imposed on the polity. The attendant apprehension and fear occasioned by the bloodshed during the military takeover led to secession bid by the Ibo speaking Easterners and to forestall the imminent break up, the military government adopted the creation of additional states as a technique. On May 27, 1967, twelve states structure from the existing four regions were created by the military government of Col. Yakubu Gowon. The core Igbos of Eastern region who were treated as monolithic structure, lost the support and allegiance of the other tribes with the creation of the Rivers and the Cross Rivers States.¹¹

The establishment of the twelve state framework in 1967, led to the effective transfer of the reins of national power from ethnic majority politicians or their cohorts in the military to a minority dominated governing coalition into three new states excised from the old Eastern region, two (then Rivers and Cross River), of which comprised oil-rich minority populated areas, leaving the Igbo landlocked and economically isolated in the third state. The colony/province of Lagos was excised from the Western region; the North like the Eastern region was fragmented into six states, while the Mid-West region was left intact.

In 1976, based on the recommendations of Justice Ayo Irikefe panel inaugurated on August 7, 1975 by the military administration of General Murtala Muhammed to look into the issues of state creation in the country, additional six states were created bringing the total number of states to 19 states.

The emergence of the Second Republic with Alhaji Shehu Shagari as President in 1979, witnessed a great movement for the creation states. Demands for new states was so volatile an issue in the Second Republic, and this led to the National Assembly proposing referenda for the creation of 29 new states. This however did not come to fruition as no state was created till the end of the Second Republic in 1983. Unlike the military era where new states were created by military fiat, the creation of new states in the Second Republic stymied by

⁸Imo J. Udofa 'The Power of Judicial Review in the Promotion of Constitutionalism in Nigeria: Challenges and Prospects' *Journal of Law, Policy and Globalization* Vol.40, 2015, 194-195.

⁹ Ojo, n.3.337

¹⁰ Ojo, n.8

¹¹ *ibid*

constitutional complexity, as the 1979 of the Federal Republic of Nigeria laid out strict provisions to adopt in the creation of new states.¹²

In August, 1985, Major General Ibrahim Babangida led other coupists to sack the military regime of Muhammadu Buhari who ousted the democratic regime of Shehu Shagari. States' agitators demanded for the creation of more states. Their clamour yielded result as no sooner than he assumed mantle of leadership, Major General Buharie set up the Political Bureau, headed by Dr. S.J. Cookey to look into the demands, by people, for the creation of more states in the country. Based on the recommendation of the Bureau, the federal government in September 1987 created two more states – Katsina and Akwa Ibom, thus, making the number of states in the country to twenty-one.

With the creation of 2 additional states in 1987, the agitation for more states became profound with ethnic colouration, the Ibos intelligentsias argued that their ethnic group have been marginalized for long in the creation of states and as such deserved new states. Babangida to placate their grievances created two new Igbo states – Abia and (new) Anambra and locating the capital of a third state, Delta in the Igbo city of Asaba in 1991. Six other states were also created to give satisfaction to distributive pressures emanating from Hausa/Fulani and Yorùbá sub-groups (Jigawa, Kebbi and Osun) or responded to the need to extend political and economic decentralization to geographically large, administratively unwieldy and/or culturally incompatible areas (Kogi, Taraba and Yobe).

The administration of General Sani Abacha, like his predecessors saw the creation of states as an avenue to reach out to the people and give his administration legitimacy. In 1996, he Chief Arthur Mbanefo as Chairman of the committee for states creation, local government and boundary adjustment. Based on the recommendations of the committee, on the occasion of the country's thirty sixth anniversary on 1st October, 1996, General Abacha announced the creation of six new states, namely; Bayelsa created out of Rivers State, with headquarters at Yenagoa; Ebonyi with headquarters at Abakaliki, was excised from Abia and Enugu States. Ekiti emerged from Ondo State; with capital at Ado-Ekiti, Gombe with headquarters at Gombe; was excised from Bauchi State; Nasarawa, with capital at Lafia, was created out of Plateau State and Zamfara, emerged from Sokoto State, with headquarters at Gusau.

Creation of Local Governments in Nigeria since independence

Like in the case of the creation of states, the agitations for decentralization in the form of creating new local government council areas pre-dated the political independence of the nation in 1960. Despite these agitations, at independence, Nigeria had three major regions (Northern, Eastern and Western Regions) and a 'Federal Capital Territory' of Lagos. Since independence, and especially during the military era, creating local government areas had become enormously popular in the country as a means of redressing the imbalance in socio-economic development among the component units of Nigeria.¹³

In 1976, 301 local governments were created, 449 local governments in May 1989, 500 local governments in August 1990, 589 local governments in September 1991, 768 local governments in October 1996 and increased steadily to 774 by 1999. One of the major assumptions was that the local governments need to meet the challenges posed by diversity in Nigeria. At present, the three regions at independence have been partitioned into thirty-six

¹² Section 8 of 1979 Constitution of the Federal Republic of Nigeria.

¹³ Kunle Awotokun 'Local Government Administration under 1999 Constitution in Nigeria' *Journal of Social Sciences*, 10(2), 129 (2005).

states and a Federal Capital Territory and seven hundred and seventy-four Local Government Areas. Despite these, the tempo of clamours for new states and Local Government Areas remained very high throughout the nation.¹⁴

Creation of States under the 1999 Constitution of Nigeria

The Constitution of the Federal Republic of Nigeria, declares that Nigeria is federation made up of states and a federal capital territory.¹⁵ It goes further to provide the number of states that make up the federation as thirty six, listing them by names as follows; Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwaram Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe and Zamfara.¹⁶ Section 3 of the said constitution provides for the headquarters of the to be known as capital city.

Having provided for the number of states and further listing them in section 3 and in the First column of Part I of the first Schedule to the constitution¹⁷, the creation a new state will require a constitutional amendment for it to become part of the constitution. The procedure for creation of a new state also automatically requires an adjustment of boundary and it is set out by both the constitution,¹⁸ and Creation of States and Boundary Adjustments (Procedure) Act, 1982. Under Nigeria's constitutional democracy,

Section 8 (1) of the 1999 constitution provides that a new state to be created, a request by a request, supported by at least two-thirds majority of members (representing the area demanding the creation of the new State) is made in writing to both chambers of the National Assembly (Senate and House of Representatives, the State House of Assembly in respect of the area and the local government councils affected. Section 1(2) (c) of Creation of States and Boundary Adjustments (Procedure) Act, 1982 further provides that the request to the local government councils in respect of the area must in respect of the area, only if those members append their signatures or right-hand thumb impressions to the request. Section 1(3) of the Act, outlines the detailed particulars of information that must be contained in the request for the creation of states which are;

- (a) the name of the proposed State;
- (b) a full and clear description of the area covered by the request; and
- (c) the names of all elected members for the time being of the local government councils, House of Assembly, House of Representatives and the Senate representing the area covered by the request and supporting the impressions appended thereto directly opposite their names.

The National Assembly having received the request in writing and being satisfied that the said request so received has complied with the provisions of section 8 (1) (a) of the Constitution of the Federal Republic of Nigeria 1999, shall direct the Independent National Electoral Commission (INEC) by resolution to conduct a referendum of the area (where the

¹⁴ Ojo, n.8. 348

¹⁵ S. 2(2)

¹⁶ S.3(1)

¹⁷ S. 3(2)

¹⁸ S. 8 (1) (a-d)

demand for the creation of the new state originated) with respect to the said proposal. The proposal within thirty days of having been accepted by resolution of both chambers of the National Assembly is gazette. The clerk of the National Assembly is required to communicate the directive of the National Assembly to INEC within thirty days.¹⁹

Upon the National Assembly receipt of the certificate of a result of the referendum from the INEC, and if the result shows that the proposal for the creation of the new State has been approved by at least two-thirds majority of the people of the area who actually voted, then the President of the Senate shall transmit a copy of the said certificate of result of the referendum issued by INEC to the Speaker of every State House of Assembly in the Federation who shall cause it to be laid before the House for its consideration.²⁰

The House shall take a vote on a motion moved by any of its member for the approval of the result of the referendum.²¹ The Clerk of each House of Assembly shall issue a certificate, certifying the result of the votes taken on the motion and deliver or cause to be delivered such certificate to the Clerk of the National Assembly who shall in turn submit same to the President of the Senate and the Speaker of the House of Representatives.²²

If the certificate of the result of the voting on the said motion in the Houses of Assembly shows that the motion has been approved by a simple majority of all the States of the Federation supported by a simple majority of the members of the House of Assembly, a resolution may be proposed by any member in each House of the National Assembly calling on the House to approve the proposal for the creation of the new State.²³ If the resolution is passed by two-thirds majority of members of each House of the National Assembly, the National Assembly shall proceed to enact a law creating the new State.²⁴

From the above procedure once the law creating the new State is enacted, it will require an alteration of Section 3 (1) of the 1999 Constitution to reflect the new State created.²⁵ It is instructive to note that the provisions of the 1999 constitution and the Act as it relates to state creation need to be strictly adhered to before such State can be created and in meeting the procedural requirements, agitators for creation of new States need to win the support of two-thirds majority of Nigerians through their duly elected representatives.

1999 Constitution and creation of new Local Government Areas

The 1999 Constitution deals with the establishment, composition, structure, finance and functions of local government councils in section 3(6), 7 (1-6) and 8 (3, 5 and 6) of the 1999 Constitution. Section 3 (6) provides for the numbers of local government areas that exist in the federation. It provides that there shall be seven hundred and sixty-eight local government areas in Nigeria; this is reflected in the Second Column of Part 1 of the First Schedule to this Constitution with an additional six area Councils shown in Part II of that Schedule. The

¹⁹ Section 2 (1-3) of Creation of States and Boundary Adjustments (Procedure) Act, 1982 (hereinafter referred to as the Act)

²⁰ S. 9(1)

²¹ S. 9 (2)

²² S.9 (3)

²³ S.9 (4)

²⁴ S.9 (5)

²⁵ Ilias B. Lawal 'The review of the constitutional amendment procedure and presidential assent in Nigeria' *Journal of Law and Conflict Resolution*, Vol.7 (5), 26-27, (2015)

constitution further lays out the procedure for creating new local government area in section 8 (3) thus;

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

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

- i. The House of Assembly in respect of the area and
- ii. The local government councils in respect of the area, is received by the House of Assembly;

b. A proposal for the creation of the Local government area is thereafter approved in a referendum by at least two-thirds majority of the people of the local government area where the demand for the proposed local government area originated.

c. The result of the referendum is then approved by a simple majority of the members in each local government council in a majority of all the local government councils in the state, and

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

Section 8 (3) apparently gives the powers to create new local government areas to the state government through the State House of Assembly.

However, Sections 8(5) and 8(6) required the involvement of the Federal Government through the National Assembly in the process of creating new local government areas in the country. The same section further states in sub five; that an Act of the National Assembly passed in accordance with the section shall make consequential provisions with respect to the names and headquarters of states or local government areas as provided in Section 3 of the Constitution and in Parts 1 and II of the First Schedule of the Constitution.

Section 8 (6) gives the National Assembly powers to receive from each House of Assembly returns of the creation of more local government areas pursuant to subsection (3) of the section.

Though section 8 (5 and 6) seems to be a mere formality with regard to the role of the National Assembly in creating new local government areas in Nigeria. The Supreme Court in *Attorney General of Lagos State v Attorney General of Federation*,²⁶ stated otherwise by declaring the action of Lagos State Government to create new 37 local government areas under the Local Government Area Law NO. 5 of 2002, from the constitutional provided 20; without the involvement of the National Assembly as not only being unconstitutional, null and void.²⁷ Ebonyi, Katsina, Nassarawa, Niger and Yobe States who had also created new

²⁶ (2004) 18 NWLR (Pt. 904) 1.

²⁷ Udofa, n.8

local government areas from the existing ones in the constitution were also in breach of the constitutional provision as the new local government areas were declared inchoate.²⁸

Though it is the duty of state government to initiate the creation of new local government areas in their states, it is not an exclusive duty. Both chambers of the National Assembly are involved for such creation to be legal and constitutional. It is fundamental to note that the creation of new local government areas will require an amendment of the constitution and this must go through the constitutionally recognised procedure of amendment of the constitution. No state governor can amend the constitution without the National Assembly, likewise the creation of new local government area. Where this is not followed, whatever decisions reach will amount a nullity and the local government created will be declared inchoate.

Comparative Analysis of Creation of States and Local Government in Ghana

The constitutions and other instruments of legislation in other countries also make provisions for the creation of new states and local government areas. The Republic of Ghana will be discussed vis-à-vis the position in Nigerian constitution and legislation.

Ghana: In Ghana for instance, the Constitution of Ghana invests the President with the power to create districts but the procedure and criteria for their creation are spelt out in the Local Government Act of 2004 (Act 462).²⁹

The Local Government Act in Article 1 (2) states as follows:

The President may, by executive instrument,

(a) declare an area to be a district, and (b) assign a name to the district.

(3) The President shall in the exercise of the powers under subsection (2) (a) direct the Electoral Commission to make appropriate recommendations.

(4) The Electoral Commission shall, before making recommendations to the President under subsection (3), consider factors including

(a) in the case of

- (i) a district, that there is a minimum population of seventy-five thousand people;
- (ii) a municipality, that the geographical area consists of a single compact settlement and that there is a minimum of ninety-five thousand people;
- (iii) a metropolis, that there is a minimum of two hundred and fifty thousand people; and

²⁸ Okafor, n. 114

²⁹ Raymond Baguio Bening 'The Creation of Districts and Constituencies in Ghana: Some Pertinent Issues in the Current Dispensation' *Ghana Journal of Geography* Vol.4, 2012. 2.

(b) the geographical contiguity and economic viability of the area, namely, the ability of an area to provide the basic infrastructural and any other developmental needs from the monetary and any other resources generated in the area.

A critical examination of the above provision highlights a distinction between creation of states and local government areas in Nigeria and that of Ghana. While in Nigeria, it is a purely legislative function as the National Assembly, State House of Assembly and Local Government Legislative Council are invested with the joint powers to create new states and local government areas, being an act that will require an amendment of the constitution, in Ghana, the legislature does not play a role in the creation of districts. The power to declare an area a district is strictly domiciled in the president who can do same by executive instrument.

While the Independent National Electoral Commission (INEC), conducts a referendum to provide the citizens the opportunity to participate in the process of state and local government creation in Nigeria, the Electoral Commission of Ghana is to merely make recommendations without providing an avenue for public participation in the process. Unlike in Nigeria where emphasis is on the detailed procedure for creation of new states and local government areas, the Local Government Act of Ghana sets out criteria to qualify an area to be declared a district.³⁰

Conclusion/Recommendations

The issue of creation of new states and local government areas in Nigeria appears to be merely for the purpose of placating agitators for political balance in the polity. This is responsible for the slow rate of development across the country as reflected in the explosion in the numbers of states and local government areas in Nigeria. From three regions and a federal capital territory at independence in 1960, the country at present has 36 states, a federal capital territory, 774 local government areas and several more pseudo local government areas called local development authorities. State governors at present abuse the constitutional powers granted them to create local government areas, by circumventing the provisions requiring inputs from the National Assembly and constitutional amendments.

It is recommended that there is need for constitutional amendment to reduce the powers of the state governors to create local government areas by whatever nomenclature. The proliferation of local governments in the country, instead of aiding development, impedes same as the overhead costs of running the system is astronomically high leaving little or nothing for development of the system.

³⁰ Article 1(4) (a) (i-iii) of Local Government Act of 2004 (Act 462).