**BEING A KEYNOTE ADRESS ON ENTRENCHING LOCAL GOVERNANCE AND DECENTRALISATION ISSUES IN THE NIGERIA CONSTITUTION REVIEW PROCESS RESENTED BY COMRADE IBRAHIM KHALEEL ADK, NATIONAL PRESIDENT NIGERIA UNION OF LOCAL GOVERNMENT EMPLOYEES (NULGE); AT A WORKSHOP ORGANISED BY THE CENTER FOR DEMOCRACY AND DEVELOPMENT ON THURSDAY 4TH – FRIDAY 5TH OCTOBER, 2012 AT SHERATON HOTEL, ABUJA.**

**PROTOCOL**

The history of local government in Nigeria has been one long episode of trial error, of attempts to reconcile participation of people in their own administration with the need for an efficient delivery of essential services. What emerges from this is that whereas successive regimes have shown some commitment to the development of local communities through local institutions, the greatest problem has been how best to organize these institutions to guarantee the much needed national development.

It sad to note today that with the level of corrosive abuses and serial violation on the sanctity of Local Government system by the 3rd republic politician in Nigeria, Local Government is fast sliding back into the events after the military takeover of 1966 and before the creation of states when the native court system became part of the Judiciary, the local government Police was disbanded, and its useful personnel integrated with the Nigeria Police Force; the Native Authority Prisons were taken over by the Nigeria Prisons and re-organised.

Comrades do not let me not bother you about the evolution of Local Government and the vital position of Local Government in the socio-economic development of the developed world or even some of the African Nations.

It is only necessary to dwell on factors that hinder the entrenchment of Local Governance and Decentralisation in Nigeria.

**THE 1999 CONSTITUTION AND LOCAL GOVERNMENT ADMINISTRATION.**

There are some contradictions in the 1999 constitution of the Federal Republic of Nigeria in relation to local government administration. Section 7(1) states emphatically that “The system of local government by democratically elected local government councils is under this constitution guaranteed; and accordingly, the government of every state shall subject to section 8 of this constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils”. Yet, section 7 (6a) submits that “the National Assembly shall make provisions for statutory allocation of public revenue to Local Government councils in the federation. But the confusion is extended further by section 7 (6b) which states that “the House of Assembly of a state shall make provisions for statutory allocation of public revenue to local government councils within the state”.

This confusion also resurfaced in section 162 (6) where it established the State Joint Local Government Account for the purpose of payment of “all allocations to the Local Government councils of the State from the Federal account and from the Government of the State”. In Section 162(7) it directs State Government to pay to Local Government councils its total revenue on the terms prescribed by the National Assembly. At the same time it gives the same power and functions to the State House of Assembly in section 162(8)

Further, section 8 (subsections 5 and 6) saddles the National Assembly with some functions before creation of a local government can become legal. The implication of all the identified contradictions and ambiguities is that it is difficult to locate constitutionally the locus of power on local government creation.

The unresolved contradictions, confusion and ambiguity created in the 1999 constitution have been tools in the hands of some third republic generation of politicians to cripple the Local Government system in Nigeria.

 **PAST EFFORTS AT RE-STRUCTURING THE LOCAL GOVERNMENT SYSTEM.**

***THE 1976 REFORMS***

The 1976 Local Government Reforms in Nigeria have been variously described as a watershed, an ingenious reformation, a catalyst for sustainable and meaningful local governance, and a radical departure from local government administration of convenience to a local government system of content. Its general acceptability, to the extent of being imitated by some African countries is a testimony to the fact that it is a classical foundation for effective and efficient local government system.

It is important here to re-state five of the platforms of the 1976 local Government reforms.

* One was to institute an enduring viable Local Government Council System.
* Two, related to the creation of a system that could serve as a catalyst for the development of the areas involved.
* Three, was to have a local government with a uniform structure through a one-tier system such that a local government would not be less than 150,000 people or more than 800,000 people.
* Four, was to insulate the exalted and respected position of traditional rulers from the vagaries of partisan politics.
* Five, as eloquently stated in the Local Government Reform Guidelines of 1976 was the need to guide against the situation where “The state governments have continued to encroach upon what would normally have been the exclusive preserve of the Local Government”.

The powerful message of the 1976 reforms could also be felt in its revolutionary approach to the structure, functions, powers and staffing in the local government councils.

It is instructive to note that other reforms have since been carried out without substantially tinkering with the 1976 reforms. Such reforms include:

* The Ahmed Talib Committee on Pension
* The Oyeyipo Committee and
* The Dasuki Committee reports.

The 1976 reform also led to the creation of 301 Local Government Councils. Later, all the provisions of the 1976 reforms were incorporated into the 1979 Presidential Constitution.

***THE 1984 DASUKI REPORT***

Suffice to say that the Dasuki Report of 1984 also made significant impact on the destiny of Local Government in Nigeria. This is further corroborated by the incessant reforms and improvements in the status of Local Government institutions. It also shows the Local Government Area’s indispensability as an agent of grassroots democracy and inculcation of the spirit of public accountability. This is evidenced by the under-listed developments.

* The 1988 scrapping of state Ministries of Local Government
* 1988 Policy of direct disbursement of statutory allocations
* 1989 creation of additional 149 local government areas.
* 1989 new allocation formula, which gave 15% to Local Government.
* 1990 transfer of the primary health care program to the local government.
* 1991 transfer of primary school administration to local government.
* 1991 separation of power at the local government.
* The appointment of political secretaries at the local government level.
* 1992 abolition of local government service commission and its subsequent reinstatement.
* The presidentialization of local government as well as administration and financial autonomy granted to the local government.
* The institution of 774 Local Government Councils.

One of the major objectives of the 1976 Local Government Reforms and the others that followed had been institutionalization of popular participation in the local political process. The commitment of the various regimes to achieve this objective cannot be under estimated. Unfortunately, not much attention has been paid to the performance capacity of Local Government Councils.

**THE ETSU NUPE REPORT OF 2003/DRAFT WHITE PARER OF 2004**

In 2003, The Obasanjo administration set up an 11- man Technical Committee on the Restructuring of Local Government in Nigeria. After the submission of its report, Government set up a White Paper Committee which had as members the present Senate leader, Distinguished Senator Victor Ndoma-Egba SAN, and Hon. Terngu Tsegba, Chairman House Committee on State and Local Government (as he then was) to represent the Senate and the House of Representatives respectively. In the Draft White Paper, Government accepted far reaching recommendations of the Etsu Nupe report. Principally:

* The recognition of Local Government as the autonomous third tier of government in Nigeria.
* The abolition of the State-Local Government Joint Account.
* Direct remittance to each Local Government Council of its own share of the Federation Account.

These and other landmark recommendations were not implemented because it required amendment of relevant sections of the 1999 Constitution.

**CONSTITUTIONAL AND ADMINISTRATIVE RESTRUCTURING OF THE LOCAL GOVERNMENT SYSTEM IN NIGERIA**

In over one and half decade the Nigeria Union of Local Government Employees (NULGE) has been in the forefront of agitating for the restructuring of the Local Government as a way of speed-up the development of Nigeria. As a major stakeholder in the Local Government system, NULGE observes that:

1. The Interventionist policies of the Federal and State Governments with respect to Local Government administration demonstrate clearly the structural inadequacies and imbalance in the 1999 constitution.
2. The concept of bringing governance closer to the people through a third tier participatory form of government has not materialized in Nigeria.
3. The lack of capacity of Local Governments to fulfill the aspirations of their communities is caused by inadequate resources, including inappropriate fiscal base, the usurpation of the right to raise internal revenue, and the manipulation of the state joint local government account.
4. The creation of Local Council Development Areas or Centers is directed towards enhancing the powers of the State Governors and creating an empire for them rather than promoting the idea of bringing government closer to the people to aid participatory democracy and governance and effective service delivery.
5. The appointment of caretaker committees to run local governments is manifestly unconstitutional.
6. The present structure of Local Government does not guarantee service delivery, security and poverty eradication.
7. As far as the local people are concerned, there is no particular party that can be absolved of the ongoing crises hence the need for a constitutional mechanism to protect the Local Government system from further abuses.

These and other realities across the nation have turned our Councils to a caricature of Local Government administration where all manner of experiments, political and administrative are carried out.

There is no State in the Federation of Nigeria where one form of illegality or the other is not committed with the funds of Local Governments. Through over deduction of primary school teachers salaries; spurious State/Local Government joint projects, sponsoring of elections, taking over the statutory functions of local governments and handing them over to cronies and consultants; Non payments of pensioners and Non-utilization of training fund despite the mandatory deduction of stipulated percentages for these purposes, we can go on and on. Most of these shameful activities are known to all of us.

As at today, only ten (12) states (Lagos, Edo, Rivers, Cross-Rivers, Ebonyi, Kwara, Niger, Sokoto, Jigawa, Akwa-Ibom, Zamfara and Taraba) out of thirty seven (37) States of the federation have elected representatives running the affairs of their Local Government Councils. This is central to the whole problem because it is by planting stooges who neither have the mandate of the people nor the moral strength to resist the excruciating control of the State Governments that perpetuate the rot.

The Supreme Court ruled on April 5, 2002 that the responsibility of funding primary school education rest with the State Governments. Despite this judicial interpretation on whose responsibility it is to fund primary education as contained in the 4th schedule of the Constitution by the highest Court in the land only two (2) States-Delta and Rivers are seen to be complying with the Supreme Court judgment.

In Imo State, Local Government Workers had to embark on series of industrial actions to get their accumulated salaries paid. While their 5 years arrears of all statutory allowances are fast becoming bad debt.

Between the months of July and August 2011, the National Secretariat of the Union literarily relocated to Ekiti State to intervene in the case of senior staff of Local Government service in the State who were disengaged from service because “they failed to pass a promotion examination”. Before we succeeded in getting some of them back to the service, we had lost quite a number due to untold humiliation. These are officers who used the most useful part of their lives to serve their motherland.

The drive to maximally control the Local Government Councils is taking another dimension now. Senior officials in the Councils who are Directors of Administration, Finance and others are being removed or deployed while lesser officers who are not qualified for such positions are appointed to replace them. The intention is to get them intimidated in the face of diversion of Local Government funds by the State Governments. This is being the case in Ekiti, Abia and Kano States.

In Lagos State all manner of gazettes, policies and laws are being produced on daily basis. If it is not to take over the collection of revenue and other statutory functions from Local Governments, it will be to deploy some cadres to State Government Boards or Commissions, all in the brazen and rapacious desire to exercise their excruciating control on the Local Government.

In Plateau State, staff of the Local Government system are being deployed and restricted to serve only in the Local government of their origin. This strange policy is being implemented in utter violation of the extant Unified Local Government Service Law. Also the Local Government staff are being singled out for exemption in the implementation of the new minimum wage while their counterparts in the state civil service have since enjoyed the wage increase.

In all these unwholesome abuses, Sections 7 and 162 of the 1999 Constitution among others have been a shield and an escape route for many State Governments to manipulate the Local Government and reduce same to a mere department in the Governors’ office. This has been the anti-development instrument used to frustrate every progressive and patriotic action to make the Local Government work since the return of the Country to democracy in 1999. These sections of the Constitution have outlived their usefulness and have to be removed.

Consequent upon the structural inadequacies of the 1999 constitution which cannot be explained under a true federal system, The Union recommends an urgent amendment to the 1999 Constitutional as it affects the Local Government system.

 **RECOMMENDATIONS ON THE AMENDMENT TO 1999 CONSTITUTION**

1. **Local Government as a Federating Unit.**

Under the proposed amendment, there should be the inclusion of Local Government in the general provision chapter 1 part 1, sub-section 2 as one of the Federating Units of the Nigerian Federation with its establishment, Composition, powers, functions and tenure all spelt out. This will put a stop to the humiliating status Local Government has been subjected to over the years.

1. **Removal of Section 7 of the 1999 Constitution.**

This section of the 1999 constitution is full of contradictions and confusion. It is under this ambiguity that State Governments hide to manipulate the Local Government system by aborting democratic governance, suspending elections and imposing a regime of caretaker administration; usurping the statutory functions of local government and plunder its resources.

To replace this section, a chapter on Local Government should be provided in the Constitution to restore the autonomy of Local Government and guarantee its status as the third tier of government in Nigeria with power to exercise all Executive, Legislative and Administrative functions. This chapter will deal with issues such as: Tenure of office; Public Service of Local Government etc

1. **Amending section 162 of the 1999 constitution by scrapping the State Joint Local Government Account.**

Only an outright removal of the section that creates the state joint local government account can stop State Governments from tampering with Local Government funds to the extent that only between 23-25% of statutory allocation from federation account eventually gets to the Local Government due to illegal and sundry deductions. All lawful methods to stop this fraud, including judgments of the Supreme Court and other Courts of competent jurisdiction have been frustrated by the State Governments. This will guarantee fiscal jurisdiction through direct remittance of local government allocations from federation account to respective Councils with necessary checks to guard against the mismanagement of public funds.

The amendment of this section should broaden the revenue generation capacity of the Local Government and specifically forbid the State or Federal Governments from encroaching upon the statutory functions of the Local Government as listed in the Fourth Schedule of the 1999 Constitution.

1. **Removal of State Independence Electoral Commission in section 197 (1) (a) and part II of the Third Schedule.**

As earlier mentioned in this address, only 12 out of 36 States of the Federation have elected official at the helm of affairs of their respective Local Governments. Even States with supposed elected officials in their Local Government, have their elections enmeshed in one form of controversy or the other. The State Independent Electoral Commission in the hands of the State Government has been a tool to withhold, delay and frustrate elections into Local Government through all manners of gimmicks both legal and political.

The repeal of this provision from the 1999 Constitution and transfer of the responsibility of conducting Local Government elections to the Independent National Electoral Commission (INEC) as was obtained in the 1979 Constitution will restore sanity to the electoral process in the Local Government and check the ‘win all’ syndrome by the ruling party at the State.

1. **Restoring the Constitutional recognition of the Local Government Service Commission.**

The 1979 and 1989 Constitutions provided for the Local Government Service Commission which guaranteed and stabilised the public service of the Local Government system. The omission of this in the 1999 Constitution has made the local government service inferior to their Federal and state counterparts with all forms of discriminatory practices within and outside the service. A constitutional amendment is required in this respect for the inclusion of the Local Government Service Commission in the Nigerian Constitution. It should be noted that section 169 of the 1999 Constitution recognizes the Federal Civil Service while section 170 deals with the establishment of a Federal Civil Service Commission. Section 206 gives legal effect to the existence of State Civil Service while section 207 establishes State Civil Service Commission. But regrettably, the Local Government Service was not mentioned and the Local Government Service Commission not included in the Constitution.

Given the strategic importance of the Local Government Service Commission in relation to man power development at the Local Government level, there is need for its constitutional recognition as a quasi – judicial body which shall enjoy its funding directly from the Federation Account and draws all its staff from the Local Government service. This will save the Commission from the current spate of dissolution and muzzling by state governments.

1. **Office of the Auditor General for Local Governments.**

This office should be constitutionally guaranteed and protected to be able to function effectively. His appointment and disengagement should be made by the Governor upon recommendations by the Local Government Service Commission after a written and oral screening subject to the confirmation of the State House of Assembly. He should possess qualification and cognate experience comparable to those of the Federal and State Auditors-General.

The Auditor General for Local Governments and all supporting staff shall be drawn entirely from the local government service. The office should be allocated 1% of revenue accruing to the Local Governments in the State for the purpose of maintenance and capital projects.

1. **Traditional Institutions**

Subject to the peculiarities of traditional institutions in each State of the Federation, It is recommended that the Constitution recognizes the establishment of traditional councils in each State of the Federation who shall be empowered to organize their operations within the State.

This is to insulate them from the temptation of being dragged into the murky waters of politics.

Their major roles shall be advisory on issues relating to chieftaincy matters, security and other socio-welfare responsibilities of government.

1. **National Council on Intergovernmental Relations.**

 There is need to re-establish the strategic council to supervise, guide and ensure the strengthening of democracy and its ideals and reenacting the federal principle of “co-ordinate” among the three tiers of government.

The Council should be empowered to handle supervisory and watchdog roles of all the tiers of government ensuring that the relationship between them is complimentary and not dominating. It should be charged with functions such as:

* Provision of uniform performance indicators.
* Collation of relevant data of all the tiers of government for the purpose of determining the judicious utilization of public funds allocated to them.
* Evaluating, reporting and publication of a national comparative report on all the tiers of government.

Nigeria, at this point of our national life needs this Council that will act as a catalyst for development and strengthening of our democracy.

**CONCLUSION**

The United Nation’s office on public administration defined Local Government as a sub-division of a nation, constituted by law with substantial powers to control local affairs. It is in the light of this indisputable position of Local Government and its pivotal role in the development of any nation that the effort of the Center for Democracy and Development (CDD) is highly appreciated. It is the expectations of Nigerian that the National Assembly will find the recommendations of this workshop useful for the repositioning of the Local Government system in Nigeria.