

Local Government as a Third Tier of Government in Nigeria: An Appraisal

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Abstract

The study appraises the legal-cum-institutional framework for Local Government System in Nigeria; having at the background whether or not local government is a third tier of government in Nigeria. The research method used here is doctrinal. That is laws, case laws, statutes, constitution which constitutes the primary source, supplemented with textbooks, magazines, journal articles and relevant clippings from Newspapers that constitute the secondary sources. The theoretical model adopted for this paper was the Efficiency School of Thought. The utility of this theory to the paper is that it illuminates and highlights the responsibilities of governance as continuously increasing in the modern world. Consequently, it is essential for the central government to focus on national issues while delegating minor and local matters to the smaller units of government. The findings from the study revealed among other things, that from the various laws and institutions reviewed, it is evident that the local government has come to stay as an independent unit of government outside the Federal and State governments. The study recommended among other things, that the Federal Government should genuinely superintend the repositioning of the local government system in Nigeria. This entails the return to the practice under the Babangida led administration when local governments were receiving their monthly statutory allocation directly from the Federation account. Effort should be made to amend section 162(6) 1999 CFRN (as amended) with the view of abolishing the joint State-local government account and scraping some agencies of the State government like the Ministry of Local Government and Chieftaincy Affairs that are used by the State to control local government.

Keywords: Autonomy, culture, diversity, federation, institutional framework legal, Local Government, third tier and uniformity,

Introduction

The expediency for the creation of local government anywhere in the world **stems** from the need to facilitate development at the grassroots. Within the Nigeria's socio-political context, with multiplicity of culture, diversity of languages and differentiated needs and means, the importance of such organisation in fostering the needed national consciousness, unity and relative uniformity as well as preservation of peculiar diversities cannot be over emphasised. The place of the third tier government, that is Local Government administration in Nigeria, argued Nwakanma (2013), has remained the thorniest and contentious issue in Nigeria Federation. It has to be, principally because it actually

handled general distortions in public service delivery at the most crucial levels of government. For him, the local government is the most important tier of government principally because it is the so-called basis for grassroots governance, and by statutory fact, provides the most domestic of the homeland services in a nation. He concluded by arguing, that it is by its very nature that vital arm of public governance, and the true measure of our autonomy from an overwhelming behemoth state.

Local government like any other concept in the Social Sciences is nebulous as it is being defined or described in different ways by different authors. Despite these divergences, the consensus among scholars is that local government is an extension of government from the centre or an extension of government to the local communities aimed at ensuring efficiency of governance. Thus, it is a government operating at the base level or rudimentary level of the society. Local government is an organ of the State put in place to paddle the developmental activities of a particular place or district with a view to making the impact of governance being felt at the grassroots level.

The indispensability of local governance was succinctly captured by Olowu (1996), when he posits that:

The experience of most nations, whether unitary or federal, indicates that such intermediate level institutions between the national government and the people are necessary. The evidence abounds in the fact that every nation creates such sub-national institutions and often gives them prominence in the administration of basic services. These institutions are given different names in different countries. One traditional label has been local government.

This position was corroborated by Adeyeye in Adamolekun et al (1988) who contends similarly that:

Every modern nation comprises a number of local communities that is, groups of person located in a defined geographical area, each having its own special demographic composition, socio-economic structures and needs, local loyalties and tradition that differ to some degree from those of other communities. Olowu even admits that in a sense, "even State governments are local governments" except that they are generally superior to local government institutions in terms of their status, scale and range of functions.

Local governance according to Eminue (2006), promotes decentralization or the decongestion of the centre. The modern central government is becoming over burdening, over-loaded, over-bureaucratized and under-responsive. Looking at the existence, performance and relevance of local government, Laski (1982) opines that: We cannot realise the full benefit of democratic government unless we begin by the admission that all problems are not central problems, and that the result of problems not central in their incidence requires decision at the place, and by the person, where and whom the incidence is most deeply felt. The objective of the study is to appraise the legal-cum-institutional framework of local government in order to see whether or not local government is indeed a tier of government in Nigeria.

Theoretical Explication of the Discourse

The theoretical framework adopted in the analysis of the subject matter is the Efficiency School of thought. Eminiue opines that the efficiency – service school which locates the rationale for local government in the provision of special services argues that while some services such as defence and external affairs need or be provided by the central government for purposes of maintaining common national standards or because they are of immediate or of direct interest to the ordinary citizen, and while regional planning for socio-economic development and similar services are best provided at the State level, some services such as local roads, distribution of water supply, housing for low income groups, health services, agricultural that is the right quality, quantity, time and speed except in accordance with local needs. In supporting this position, Campbell in Adamolekun et al., posits that:

The division of responsibilities for public services is generally built on the broad concept that some services need to be established to provide a common national standard for all (for example, health and defence) and that these should therefore be controlled by the central government; that others are best provided in the broader sub-divisions of the (nation) rather than the centre (for instance regional (State) planning for economic development); and that others again are best administered in accordance with local needs and therefore should be decentralised down to local level. John Stuart Mill who, more than anyone else, epitomises this school had in fact argued that because of its closeness to the people who share a community of interest, local government can provide certain services for more efficiently and economically than can do the central government, and that it was convenient and advisable that those who share this community of interest should administer such services (Mill, 1975; Gboyega, 1987). The utility of this theory to the study is that it highlights that the responsibilities of governance are continuously increasing in the modern world, and that man-made and natural disasters impact on the daily existence of nations. Consequently, it is essential for the central government to focus on national issues while delegating minor and local matters to the smaller units of government.

The Third Tier Question

The legal framework of local government as the third tier of government in Nigeria was not established until the 1976 Reforms. Before this Reform, local governments were regarded as an arm of the State (ie regional) government. It was 1976 reform, which for the first time accorded Local Government Third Tier or level of government in Nigeria. The reform document (otherwise known as the guidelines for local government – Reforms of 1976) described the local government as:

Government at local level exercise through representative councils established by law to exercise specific powers within defined areas. These powers should give the council substantial control over local affairs as well as the staff and institutional and financial powers to initiate and direct the provision of services and to determine and implement projects so as to complements the activities of the state and federal government in their areas, and to ensure, through devolution of function to these councils and through the active participation of the people and their traditional institutions, that local initiative and response to local needs and conditions are maximised.

The 1976 reforms were designed to strengthen the local government, stimulate democratic self-leadership potential at the **grassroots**, ensure the availability of amenities and endow the local government with human, financial and material resources that would institutionalised a culture of participatory democracy, co-operative federalism and even development recognition of local government system (Adefi, 2012).

According to the United Nations Division of Public Administration, a local government is:

a political sub-division of a nation or a country which is constituted by law (and vested with) substantial control of local affairs, including the power to impose taxes or to extract labour for prescribed purposes. The governing body of such an entity is elected or otherwise locally selected.

From the above definition, Saadu (2017) posits, that it can be argued that local government has a number of features, some of which includes: (a) Is a subordinate unit or level of government; (b) It has legal and constitutional power to carry out certain legislative, administrative and semi-judiciary functions; (c) It has powers to make policies, prepare budgets and some measure of control over staff; (d) It has a governing body or council whose membership is either elected or selected; (e) It **exercises** authority over a given geographical area and population and (f) It has a legal personality.

The constitution of the Federal Republic of Nigeria formally recognised local government as the third tier of government. Subsequent reforms, case law and judicial pronouncement since 1976 reform have tried to accept and treat the local government as third tier of government with specific legal roles and responsibilities and which comes after the Federal /State Governments in order of constitutional importance. In Section 318(1) of the constitution, "Government" is defined as follows: "The Government of the Federation, or of any State, or of a Local Government Council or any Person who exercise power or authority on its behalf".

From the constitutional meaning given to the word government by virtue of the aforesaid section of the constitution, it is incontestable that the constitution recognises the existence of local government as a separate tier of government distinct from the Federal and State Government. Section 3(6) 1999 constitution of the Federal Republic of Nigeria (CFRN) (as amended) made provisions thus: "There should be seven hundred and sixty-eight local governments area in Nigeria as shown in the second column as shown in part II of that schedule". This section of the 1999 CFRN (as amended) appears to be similar to section 3(2) of the 1979 CFRN (now defunct) in the second Republic where it was provided as follows: "Each State of Nigeria named in the first column of Part I of the first schedule to this constitution shall consist of the area shown opposite thereto in the second column of that schedule".

In the said first column of Part I of the first schedule to the said 1979 CRRN, the name and number of local governments in each of the then nineteen (19) states were listed. Akande (1982) argued that the area listed in Part II of the first schedule of the 1979 CFRN constituted fixed local government area which can be changed only through constitutional amendment. In other words, the constitution has established the local governments and to that extent, the State governments have no power to establish and constitute local governments. This argument came up for adjudication in *Balogun & Ors V.A.G. Lagos State* where it was held that the constitution did no more than define the areas of each state in the Federation. In other words, the constitution did not establish local government. It is argued therefore, that following the decision in the above case, Section 3(6) of the 1999 CFRN did not establish the local government system as a third tier of government administration in Nigeria. It merely recognises the composition of each State within the Federation.

In a clear effort to guarantee the existence of the Local Government system in Nigeria, the 1999 CFRN (as amended) clearly provided elaborately in Section 7 thus: Section 7(1):

The system of local government by democratically elected local government council 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, finances and functions of such councils – see FRN v. Solomon.

Section 7(2): The person authorised by law to prescribe the area over which a local government council may exercise authority shall; (a) Define such area as clearly as practicable, (b) Ensure to the extent to which it may be reasonably justifiable that in defining such area, regard is paid to: (i) The common interest of the community in the area; (ii) In traditional association of the community, and (iii) Administrative convenience
Section 7(3): It shall be the duty of a local government council within the state to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a law enacted by the House of Assembly of the State. Section 7(4): The Government of a State should ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote and be voted for at election to a local government council. Section 7(5): The functions to be conferred by law upon a local government council shall include those set out in the Fourth Schedule to this constitution.

Section 7(6): Subject to the provisions of this constitution; (a) The National Assembly shall make provisions for statutory allocation of public revenue to local government council in the Federation; (b) The House of Assembly of a State should make provision for statutory allocation of public revenue to local government council within the state. Section 7 of the 1999 CFRN cited in extension clearly guaranteed the existence of a democratically elected system of local government in Nigeria (see *Re Maduiké* (2019) 7 NWLR (pt. 1671) 255).

However, section 7 of the 1999 CFRN (as amended) appears to be similar in wording with Section 7 of the 1979 CFRN, the issues that agitated the mind of the proponents of local government as an autonomous third tier of government distinct from the State and the Federal Government were: (a) Whether the National or Federal Government has the powers to establish local governments outside the State governments; and (b) Whether it was within the contemplation of the makers of the constitution that the State assembly will delegate to the Governor the power to define the area of authority of a local government without the House of Assembly setting out the standard which an area of authority of a local government must confirm with; and (c) Whether a House of Assembly can validly pass a law empowering the Governor to dissolve a democratically elected local government council in Nigeria.

It is argued that the Federal Government is not granted any powers under the constitution either in the exclusive legislative list or other wise to make law with respect to the establishment, structure, finance and functions of local government councils but such powers are expressly vested in the government of every State, that is in the House of Assembly of every State. On the second problem, it has been held that the Governor cannot create new local government council or areas without the authorization of the House of Assembly. In *Jideonwo & Ors v. Governor of Bendel State*, it was held that it is in conflict with section 7 of the 1979 CRFN for the Governor of a State to nominate and appoint members of management committee of local government having dissolved or suspended

democratically elected local government council without regard to the provisions of relevant – local government law. That is, the Governor cannot unilaterally dissolve the existing elected local government council without reference to the House of Assembly because it is the province of the House of Assembly. In *Balogun & Ors v. A.G. Lagos State*, the High Court of Lagos State further clarified the position when it held that it was not within the contemplation of the makers of the constitution that the State House of Assembly will delegate to the Governors the powers to define the area of authority of a local government area without the House of Assembly setting out standards which an area of authority of a local government must conform with. Thus the legislature must not only validly pass a law for the establishment of a local government area, it must define such area.

The court has gone further to strengthen the position of local government as a distinct tier of government not subject to the discretion of a state Governor or the Governor of State in cases where Section 7 of the 1999 CFRN (as amended) came up for interpretation. In *Governor of Ekiti State v. Olubunmo*, the respondents were elected local government Chairmen of the sixteen local government councils of Ekiti State. The Governor of Ekiti dissolved the sixteen local government Council before the expiration of their tenure. The Governor acted in pursuance of Section 23(b)(i) and (ii) of the local government administration (Amendment) law 2001 of Ekiti State which empowered the Governor of Ekiti State to dissolve democratically elected local government council and replace them with an unelected caretaker committees appointed solely by the Governor. This was in clear breach of Section 7(i) 1999 CFRN (as amended).

The respondents challenged the dissolution of the local government council by the Governor and sought the following reliefs from the High Court of Ekiti States: (a) A declaration, that section 23(b)(i) and (ii) of the local government administration (Amendment) law 2001 of Ekiti State was in conflict with section 7(1) 1999 CFRN and thus null, void and of no effect whatever to the extent that it empowered the Government of Ekiti State to dissolved democratically elected local government council and replace same with unelected local government committee solely appointed by the Governor. (b) A declaration that by virtue of the combined effect of section 7(1) of the 1999 CFRN (as amended) and the provision of section 5 of local government administration (Amendment) law 2001 of Ekiti State, the Governor of Ekiti State, had no power to dissolve the democratically elected councils of the sixteen (16) local governments of Ekiti State to which the respondents were democratically elected chairmen and/or replace the respondents with appointed caretaker committees in breach of the aforesaid constitutional and statutory provisions. (c) A declaration that the tenure of the respondents was statutorily set at three years with effect from the date of their election and specifically from 20th December 2008 to 19th December, 2011. (d) An order of perpetual injunction restraining the appellants, their servant agents or privies from dissolving, suspending, terminating and/or interfering in any manner whatsoever with the existence, terms/and on operations of the respondents except in accordance with the provisions of section 7(1) 1999 CFRN (as amended) and other relevant laws.

The trial court, which was the High Court of Ekiti, struck out the case citing lack of jurisdiction to entertain the case. Dissatisfied with the decision, the respondents went to the Court of Appeal. Invoking its powers under section 15 of the Court of Appeal Act, heard the respondents suit and entered judgement in their favour and ordered the appellants to pay the respondents their outstanding allowances and entitlements. The

appellants appealed to the Supreme Court where it was held after dismissing the appeal as follows:

Under section 7(1) of the 1999 CFRN, the system of local government by democratically elected local government council is under this constitution guaranteed; and accordingly the government of every State shall ensure their existence under a law which provides for their establishment, structure, composition, finance and function of such council.

The Supreme Court further held that by community reading of the provisions of sections 4(6) and 7(1) of the 1999 CFRN (as amended) shows that a state House of Assembly is empowered to make laws for the function of local government council in the state provided that such laws do not temper with or abrogate the guaranteed existence of democratically elected councils in the state.

In *Abubakar Ibrahim Yantaba v. Governor of Katsina State*, the appellants who were the chairmen of the thirty-four local government councils of Katsina State upon allegation of financial mismanagement levelled against them, nine months after the inauguration of the councils, the respondent dissolved the councils. Being aggrieved, the appellants instituted an action in the High Court of Katsina State challenging the dissolution of the councils. The appellants lost at the High Court and the Court of Appeal. On a further appeal to the supreme court, the appeal was allowed. The Supreme Court in determining the appeal had the opportunity of making a pronouncement on section 81A of the local government law of Katsina State.

The said section provided as follows: Without prejudice to the generality of the provisions contained in section 80 and 81 of the principal law. (a) That in the interest of security, peace, order and good governance or for acts of mismanagement of public funds, the Governor may at any time before, the expiration of tenure of a local government council dissolve, any or all the thirty-four local government council. (b) The State House of Assembly may by a resolution with the support of two third majority of its members dissolve any or all the thirty-four local government councils subject to the approval of the Governor.

The Supreme Court in interpreting the above sections of the said local government law of Katsina State held as follows:

Section 81(a) of the Katsina State local government law 2000 as amended does not guarantee a system of local government by a democratically elected local government councils. Rather, it allows the Governor of the State or the State House of Assembly subject to the approval of the Governor to remove from office democratically elected local government councils instead of ensuring their existence.

The Supreme Court further held that where the provision of state legislation, in this case, the local government law of Katsina State is inconsistent with the provisions of the constitution, the provisions of the State law is invalid, and the law itself is to that extent invalid. That is any law on local government made by any State must make provision within the limits of the provisions of the constitution. The provision of the constitution must never be exceeded. The Supreme Court further held that it is the duty of the Governor of a state to ensure that the system of local government continues unhindered. Dissolving

local government councils and replacing them with caretaker committees amounts to the Governor acting on his whims and fancies. Unknown to our laws and therefore illegal. The Governor had a duty to ensure the existence of local government as stipulated by section 7(1) of the 1999 CFR (as amended).

The fourth schedule to the 1999 CFRN (as amended) clearly made provisions for the functions to be performed by local governments. In *Oluwabukola v. A.G. Lagos State*, the Supreme Court held that it is only the local government that has the constitutional power to exercise the functions outlined in the fourth schedule of the 1999 CFRN (as amended). A careful reading of Section 7(1) of 1999 CFRN will reveal that the constitution imposed on the State governments an obligation to ensure the existence of local government under a law enacted by the House of Assembly of a State which provides for their establishment, structure, composition and functions including those set out in the fourth schedule to the 1999 CFRN (as amended). It is argued that from the said section 7(1) 1999 CFRN, a State House of Assembly is vested with the power to assign functions to be performed by the local government. However, as held by the Supreme Court, such functions to be assigned by the State Assembly shall include those functions set out in the fourth schedule to the constitution. From the above, it is safe to argue that local government system in Nigeria is a clear unit of government clearly established by law and provided with functions to perform.

By sections 162(3) and (5) 1999 CFRN (as amended) the local government council as a unit of government independent of the State and Federal government in Nigeria, has direct funding from the constitution. Each State of the Federation shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation account and from the government of the State (see section 162 (6) 1999 CFRN).

Each State shall pay to local government councils in its area of jurisdiction such proportion of the total revenue on such terms and in such manner as may be prescribed by the National Assembly. By section 162(8) 1999 CFRN, the amount standing to the credit of local government councils of each State shall be distributed among the local government councils of the State on such terms and in such manner as may be prescribed by the House of Assembly of the State. Arising from the above provisions, it is argued that the constitution of the Federal Republic of Nigeria made provision for three tiers for the distribution of the money in the credit of the Federation account, that is, the Federal/State and the Local Government on a basis which shall be prescribed by an Act of the National Assembly. This is a recognition of the distinction of the local government as a separate unit of government from the Federal and State government respectively. This has re-enforced the effectiveness of the local government as a unit of government created to render certain functions independent and distinct from the services to be rendered by the Federal and State government.

The 1999 CFRN (as amended) clearly established the institution by which the Federal and State government are run. The constitution did not make provision for the institution by which the local government is run. It is argued that this is so because the constitution guaranteed the existence of the local government system by democratically elected local government councils and vested the states with the powers to create their existence under a law which provides for the establishment of structure, composition, finance and functions.

Accordingly, it is argued that the institutional framework of local government shall be contained in the various State's local government laws enacted by the States to ensure the existence of democratically elected local government.

Conclusion

The study appraised the legal-cum-institutional framework for local government system in Nigeria, having at the background whether or not local government is third tier of government in Nigeria. The study has shown that the 1999 CFRN (as amended) guaranteed the existence of local government to be run by democratically elected local government council. The constitution also vested the States with the legal authority to enact laws that shall establish the local government councils and specify its structure, composition, finance and functions assigned to it notwithstanding the fact that the constitution elaborately made provisions specifying the functions of the local government. The study has further shown that when it comes to finances, the constitution created a three tier system of revenue accruing to the Federal Republic of Nigeria and made elaborate provisions as regarding the allocation of fund to the local government. It is the study's finding that from the various laws and institutions reviewed, it is evident that the local government has come to stay as an independent tier of government outside the Federal and State government.

The way forward is that the Federal government should genuinely super intend the repositioning of the local government system in Nigeria. This entail the return to the practice under the Babangida-led-administration when local government were receiving their monthly statutory allocation directly from the Federation account, effort should be made to amend. Section 162(6) 1999 CFRN (as amended) with the view of abolishing the Joint State – Local Government Account and scrapping some agencies of the state government like the Ministry of Local Government and Chieftaincy Affairs and the Local Government Service Commission that are used by the State to control local government.

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