

ARE THESE CRACKS FOUNDATIONAL? SITUATING LOCAL GOVERNMENT PERFORMANCE IN NIGERIA WITHIN THE CONTEXT OF ITS LEGAL FRAMEWORK

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ABSTRACT: *The obvious bellow-the-mark performance of Nigeria's 774 local governments is a key reason for the call from various quarters of the Nigerian society that it be scraped. Today this third tier of government in Nigeria is synonymous with wanton corruption and gross underperformance. This paper attempts a pathology of these glaring cracks and discovers that they are only mild manifestations of a foundational defect, as key provision of the constitution upon which the local government system is premised are faulty, and ties the local government to the whims and caprices of the state that most times uses it as an avenue for political manipulations, embezzlement and the outright misappropriation of funds. Nigeria local governments are therefore weak, lack funds and bereft of the needed autonomy to perform optimally, as wells as meet the development intent for their establishment. This paper among others recommendations calls for broad and far-reaching constitutional amendments/local government reforms that would re-craft and reposition this vital tier of government to meet up with the development challenge of the 21st century.*

KEYWORDS: Cracks Foundational, LGA Performance, Legal Framework, Nigeria

INTRODUCTION

Local government remains the most popular form of political decentralization globally. This is perhaps because it among other virtues has the unequalled advantage of drawing government attention, in terms of socio-economic and political development to people at the grass-root (Blau, 1956).

The desire to explore and domesticate these huge potentials of local government was the motivation for the 1976 local government reforms in Nigeria. As a matter of fact, the then chief of staff, Brig. Shehu Musa Yar,Adua in his forward to the guideline for local government reforms in 1976 enumerated the following objectives.

1. Make appropriate services and development activities responsive to local wishes and initiative by developing or delegating them to local representative bodies.
2. Facilitate the exercise of democratic self-government close to the grassroots of our society, and to encourage initiative and leadership potentials.
3. Enhance mobilization of human and material resources through the involvement of members of the public in their local development.

4. Provide a two-party channel of communication between the local communities and government (both state and federal). (FGN, 1976). To further reinforce this framework, The 1979 constitution re-affirmed the development function as provides for in section 7, (3). Thus: *it should be the duty of a local government council within a 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 the law enacted by the House of Assembly of the state*

In spite of a framework that provides for, and mandates local governments to be agent socio-economic development/ transformation, Nigeria's 776 local governments are classical cases of gross underperformance and an institution that stands very far from the spirit and intent of its establishment. Expectedly, this unparalleled failure has continued to attract huge policy and research concerns in the last three decades (Achimugu et'al 2013). This is more so that 37 years after the sweeping 1976 reforms, Nigeria local governments are still a far cry from the intent of the reforms, as it continues to crawl in total confusion and political imbecility. This paper takes its attempt at a diagnosis to the local framework establishing local governments. This option is canvassed within the line of thought that large wall cracks may be infallible symptoms of foundational defects. We are therefore left to wonder as to how local governments in Nigeria can reform optimally with a faulty legal framework.

Conceptual Clarifications

The Nigerian 1976 local government reforms as enshrined in the 1999, 1989 and 1999 constitutions of the Federal Republic of Nigeria defined local government as: *Government at the local level... established by law to exercise special powers within defined areas (and) to initiate and direct the provision of services and to determine and implement projects so as to complement the activities of the state and federal government in their area*

The above definition no doubt carves in clear dimensions of the understanding on which local governments in Nigeria were established. A resounding theme through the definition is the fact that the local government is a distinct tier of government, saddled with clear responsibilities towards determining, initiating, and implementing projects at the grass-root level. It is also made clear that the provision of such services by the local government would complement what the State and Federal governments were already doing at the grass-root level. Nigeria local governments are therefore creations of the constitution with clearly spelt out duties, responsibilities and powers.

The United Nations definition perhaps paints the picture of an ideal local government and provides the basis for viewing Nigeria local government from the stand point of global best practices. The United Nations (1975) defines local government as *a political sub-division of a nation or in a federal system, a state which is constituted by law and has substantial control over the unit or local affairs including the power to impose taxes or to extract labour for prescribed purposes.*

Embedded in the definition are pertinent issues. First is the fact that the local government is a political sub-division which is created by law. Second, is the fact that it has substantial control over its jurisdiction and has powers to actualize such control. This connotes substantial autonomy to pursue and actualize its duties and mandate. If this is the ideal it may be important to ex-ray Nigeria's realities, against the legal basis for the existence of Nigeria local government system.

Local Governments in Nigeria: A Pathology

To say Nigerian local governments are a wrong example of what and how the tier of government should be is merely stating the obvious. This is majorly because, this vital tier of government in Nigeria is a 'giant' with clipped wings and large cracks that continues to threaten its continued existence. These cracks are perhaps summarized thus, by Nzeako (1991) ... *the frustrating button neck of the nation's bureaucracy- the missing or misplaced document, stockpiles of files and absentee officer. Ghost workers, dumped mails, financial embezzlement and mismanagement are common features of the society. These and many instance suggest how far for our society stands behind the frontiers of modern civilization.*

The lamentation above no doubt captures in general term some issues threatening the internal workings of Nigeria local government. This notwithstanding, the most fundamental issues that plague the Nigeria local government system are perhaps;

Lack of Autonomy: One the most enduring characteristic of a Federal State is the constitutional powers granted to the component units to determine, Plan, and implement it programmes with little or no interference from the central government. Though empirical evidences show that these powers are not exercised in the absence of some control, efforts at control does not and should not jeopardise and usurp the power of the component unit (Achimugu, 2013). The level of control and supervisory mechanisms that surround Nigeria local governments are overwhelming and too burdensome to allow for the needed space to engender optimal performance. In the presidency for instance, is the Bureau for government affairs but more obvious is at the state level where we have the ministry of Local Government and Chieftaincy Affairs, but more obvious is the state level where we have the Ministry of Local Government and Chieftaincy Affaires, the Local Government Service Commission and the State House of Assembly all carrying out one level of control or the other over local governments. This is besides the fact that statutory allocations from the Federation Account is by law lodged in a Joint local government account from which the state government allocates funds to its local governments, mainly at its discretion (Okpata, 2005). These control no doubt continues to inhibit the performance of Nigeria local government to the end that they are unable to meet up with their constitution mandate.

Corruption: Corruption remains a major bane of the Nigerian local government system majorly because it has overwhelmed the structures of accountability, where they exist.

Scholars like Ezeani, 2005 and Olowu, 1977 are of the views that Nigeria's problem of accountability is further highlighted by weak institutional structure for promoting account ability.

In practical terms however, local government accountability is different because most times local government funds are used to "settle" a long list of power brokers and "stakeholders" the list may include State House of Assembly member representing the local government, top officials of the ministry of Local Government and Chieftaincy Affairs, top officials of the Local Government Service Commission, the Ruling Party hierarchy, opinion leaders, elites and the governors friends, family and political/economic associates. As long as these endless wheels are regularly and adequately 'oiled' local government officials may never be held to accountability no matter the magnitude and how conspicuous their lapses are. Conversely, no matter how effective, efficient and development oriented local government officials are, if they fail to appeal to these sentiments, state powers are invoked to cut their tenure short,

starve them of funds or block their chances of re-election. The fear of humiliation compels local government officials to throw up public funds for an “often party” aimed at calming the nerves of political power brokers and unholy merchants of our collective wealth.

Poor Funding: The poor funding argument is usually a difficult one to make especially that developments around most Nigerian local government are no justifications for the funds released, no matter how small, but then, it is today an open secret that funds meant for Nigerian local government are hoarded, pilfered and released in peace-meal via the instrumentality of the State Joint Local Government Account, held and operate at the discretion of the state government. (Agalamanyi, 2005; Akor, 2001 and Okpata, 2005). Consequently, the funds made available to most local governments are just enough to pay salaries (which are most times over bloated to accommodate ghost workers) and meet up overhead costs/recurrent expenditures. Hence, the inability to pursue purposeful capital/Socio-economic development efforts.

Confusion in tenure and election of officials: Though Decree 36 of 1998 and subsequent repeals provides for a 3 year term for elected officials of local government councils, State governments all over the Nigerian federation continue to exercise their overreaching control powers over the local governments by dissolution or suspension of the chairman/Council, and appointment of state officials to take over their duties. It is important to note that most times these officials (not elected) hold office for as long as the state government desires, thereby robbing the people of one of the vital intents for the establishment of local governments in Nigeria which is political socialization and the harnessing/training of grass-root potentials for political leadership (Agalawanyi, 2005). Practically today, it is difficult to tell what the actual tenure of Nigeria local government council are, as some states (like Plateau and Anambra) would not conduct holistic local government elections in their states for one reason or the other.

Weak Internally Generated Revenue Base: The almost total dependence of Nigeria local governments on statutory allocation further keeps them attached to the apron-strings of the State and Federal government. A careful examination of the revenue base of Nigeria local governments reveal the very worst of political mediocrity. This is beside the fact that these weak avenues are not even exploited and harnessed by the federal allocation-blind local government officials who would rather prefer to get their state government-pilfered statutory allocation than exploit their internally generated revenue options.

A socio-political dimension to it however is that, most elected council officials would not want to be in the bad books of an electorate from whom they would again seek re-election. Consequently, they avoid the enforcement of bicycle, TV, Radio etc taxes which the people would view as strange exploitative and even satanic.

Nigerian Local Governments: The Legal Framework and its Contradictions.

In the words of Okpata (2005), “historically the legal basis for the creation of local government varies from one country to another”. Citing the USA model he argues that the constitution recognizes two tiers of government only. Within this model, it behooves the states to determine the nature, scope and function of the local governments within its jurisdiction.

In Nigeria however, they seem to be very glaring contradictions in the legal basis for local government existence in that, the legal instruments for their existence include.

- a. The constitution of the Federal Republic of Nigeria/National Assembly.
- b. The 1996 local government reform guidelines and
- c. The state local government law/State House Assembly.

Within the context of the 1999 Nigeria constitution section 7(1) states that

“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 the establishment, structure, composition, finance and functions of such councils”

Pursuant to the above mentioned sub-election, the State Houses of Assembly are expected to enact laws for “the establishment, structure, composition, finance and functions” of the local government councils. The fourth schedule of the 1999 constitution however went ahead to list the main functions of the local government council.

Given this circumstance, Okpata (2005) observes that constitutional provisions and the premise, decisions, actions and even inactions of the state governments in matters of the personality of the local governments are bound to have very serious legal consequences as they have made a parody of the constitutional provision. The argument here is simply that the same constitution that states that “the local government share be determined by the state goes ahead in sharp contradiction to list the function of the local government. Okoli (1981) Therefore, wonder that, “if the state is responsible for local government within the confines, what [then] is the idea of entrenching their existence in the constitution and not in the state legislation like it is done in America”

The operational implication of this identify and responsibility crisis is not just confusion but also that it leaves the local governments tied to an endless hierarchy of loyalties that fan the embers of corruption and misappropriation of public funds. This no doubt remains a colossal discredit to the existence and indeed optimal performance of local government in Nigeria.

Legal Basis of Local Government Finance

There is no jaurisjry the fact that a sound financial base is an important prerequisite to the effective performance of the roles and responsibilities assigned to local government (Ezeani, 2004).

It is against the backdrop that most country of the world have legal constitutional provisions for local government finance.

In Nigeria, section 7(6) of the 1999 constitution provision for the funding of local government thus:

- a. The National Assembly shall make provision for statutory allocation of public reform to local government council in the federation; and

- b. The House of Assembly of a state shall made provision for statutory allocations of public reform to local government council with the state.

More specifically, the revenue allocation Act 1981 provided for the statutory allocation of 10% of national revenue to local government; this become operational in 1982 (Ezeani, 2004). This statutory allocation was later increase to 15% in 1989 and 20% in 1992 (Idike, 1995:11). The state governments are required to contribute 10% of their internally generated revenue to local governments.

It is important to state that the internally generated options available to local governments are weak, reduction and not in touch with current realities. It therefore requires an urgent and objective review.

The fourth schedule of the 1999 Nigerian constitution state as one of the functions of local governments, the collection of rates, radio and television licenses, as well as the licensing of bicycles, truck (other than mechanically propelled trucks), canoes, wheel barrow and carts.

These are invariably the local government's constitutional internally generated revenue services.

Similarly, section 162 (4-6) of the constitution provides that:

- i. The amount standing to the credit of local government councils in the federation account shall be allocated to the state for the benefit of their local government councils.
- ii. Each state shall maintain a special account to be called "state joint local government account" into which shall be paid all allocation to the local government councils of the state from the federation account and from the government of the state.
- iii. The amount standing to the credit of the local governments of a state shall be distributed among the local government councils of the state on such terms as prescribed by the House of Assembly of the state.

The constitutional provision stated above is perhaps the most fundamental treatise that accounts for the character and disposition of local government in Nigeria.

This provision seems to picture the local governments as immature juveniles who are and will always be unable to manage its own affairs to meet up with the spirit and intent of its establishment. This line of thought is because, funds standing to the credit of local governments in the Federation Account is first allocation to the host state. Similarly, in an effort that looks more like a deliberate attempt to clip the wings of Nigeria local governments and crafts a master- servant relationship between local government and their host States, the constitution goes on to state that the distribution of the funds standing to the credit of local governments should be "*ON SUCH TERMS AS PRESCRIBED BY THE HOUSE OF ASSEMBLY OF THE STATE*" this obviously wide discretionary powers with regards to the disbursement of local government funds further provides the state government a fertile ground that could breed financial recklessness and wanton corruption, all at the expense of a financially frail and impoverished local government system. It is this provision that facilitates the creation of pseudo local governments christened, Development Areas, Liaison Offices, and Administrative Areas (Depending on the state), all with the aim of scoring political goals

even when it significantly reduces the funds available to the gazette local government areas, as they are forced to share their meager allocation with these hurriedly assembled political creations that either have no potentials or lack the requisite capacity to generate funds to justify and sustain their continued existence. This is not in any way an argument against the constitutionality or otherwise of states to create local governments within their respective domain, but a critical look at a constitutional provision that opens up a vital tier of government to such an alarming financial hemorrhage that weakens its structures and threatens its useful existence as an avenue of socio-economic cum political development. It is perhaps in this light that Okpata (2005) insists that the financial relationship between federal governments, state government and the local governments brings the local government to over dependence on the other tiers. This in his, and our opinion reduces the autonomy of the local governments and among other things gives the state the leeway to financially manipulate the local governments. He further explains that with regards to “the partnership relationship between the local government and other tiers of government, the local government is always rubbed of certain freedom. For instance, the statutory allocation of the federation government which were to enable the local governments function in stimulating socio-economic development of the grassroot level only trickle down in small percentages from the State Joint Local Government Account”. The argument here is that these constitutional provisions have turned out to be some of the most challenging factors that impede the actualization of the principal intent and objectives for crafting local governments in Nigeria.

CONCLUDING REMARKS

Through the local government system is globally acclaimed the most popular form of decentralization, its practical operation especially in Nigeria is not devoid of very obvious challenges that impede its enormous potential as an asset in regards to grassroot and indeed, national development. The critical analysis of this paper reveals that the obvious cracks in the everyday operations of Nigerian local governments may be only mild symptoms of a much deeper malaise. This is supported by the fact that the gaps that supplant the smooth operation foundations of Nigerian Local governments are largely foundational.

The attempt here therefore is to x-ray some constitutional provisions upon which Nigerian local government system is premised. The findings are that there are huge contradictions that breed general confusion and weakness in the operation of Nigeria local governments.

Similarly, the unique crafting of the Nigeria constitution that makes the local governments overly dependent and subservient to state governments has become an open invitation to a banquet of corruption that runs local governments aground and milks them of the much needed funds for grass root development, leaving them with little or no iota of relevance to the Nigerian people.

Attempts at a redress must urgently mean broad and far-reaching reforms that would look critically at the legal framework for their existence and operations. Such reforms should be left in the hands of Nigerians of very sound educational and professional pedigree who have the requisite experience, exposure, integrity and character strength to view issues objectively and submit to superior argument and persuasion. Their recommendations should dovetail into

broad constitutional amendments that would totally reposition the local government system in Nigeria for better performance.