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## **The 1999 Constitution and Crises of Governance at the Local Government Level: Implications for the Stability of Democracy in Nigeria**

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### **Abstract**

The paper examined constitutional provisions in the 1999 constitution as they affect governance at the local level and their implications on the stability of democracy in Nigeria. The argument was that problems confronting local government in Nigeria are aftermath of some provisions in the 1999 constitution which deprived local government of its status as a government. The word 'local' as attached to the word 'government' is only in theory, and deceptive. In praxis, local government in Nigeria exists as an appendage of the state government. Crisis of governance, the paper observed are caused by contradictions in the Nigerian constitution which often-times generate intergovernmental conflicts between the federal and state governments. The study frowned seriously at the state-local government joint account which has become a conduit pipe used by state government to siphon local government funds from the federation account and at the same time refuses to release 10% of its internally generated revenue to local government as clearly spelt out in Nigeria 1999 constitution, even when they (state governments) are aware that local government sources of internally generated revenue are not viable. In an effort to be properly informed and guided, the study adopted the survey method using secondary sources of data which included literature review of publications, newspapers, magazines, textbooks, journals and internet materials. The study derived its theoretical foundations from the efficiency services school led by Mackenzie (1961) which sees local government as an efficient agent for providing services that are local in nature to meet the expectations of the local people, prevent crisis and stabilize democracy in the country. The paper concluded with prognosis for action which included amendment of the Nigerian constitution or expunge of those anti-local government provisions that have constituted a stumbling block to effective functioning of local government and granting of financial and administrative autonomy to Nigerian local governments.

**Keywords:** 1999 constitution, crises of governance, local government, stability of democracy

## **INTRODUCTION**

The primary function of government and the core rationale for its formation is to provide services to the people. The creation of Local government, therefore, by whatever nomenclature assigned to it, anywhere in the world is to facilitate effective and efficient service delivery to the people at the grassroots level to enable them feel the impact of governance (Agba, Akwara & Idu, 2013). The importance of local government to the growth and development of rural areas in any country cannot be overstated. As a government closer to the people, local government exists to cater for the welfare of the rural people.

It is in recognition of this fact that the 1999 Constitution, Section 7, subsection 1, guarantees a “democratically elected local government councils across the country” and Section 7(3) empowers a “local government council within the state to participate in economic planning and development of the area.” Since no government can function effectively and provide services to the people, without availability of funds, the Constitution in Section 7(6) makes it the responsibility of the National Assembly and State Houses of Assembly to ensure statutory allocation of percentages of accrued revenue from the Federation Account to States and Local government councils throughout the country respectively, to aid in providing services to the local people. This shows at least, in words and on paper, that the third tier government is better positioned and empowered to develop the local areas, but in praxis, the third tier-government has not been emancipated and empowered to perform both administratively and financially its constitutionally-mandated functions. This is because the same 1999 constitution, in section 7(1) contradicts itself by making local government an appendage and puppet of the state government perpetually at its control. This has spelled doom for the third tier-government which has over the years continued to deteriorate and retrogress.

The focus of this paper is to examine those provisions in the 1999 Constitution that have hindered significant development of local government areas across the country and their implications on the stability of democracy in Nigeria. The paper will make prognosis for action to revitalize local government in Nigeria which have been in a state of comatose for decades.

Local governments in Nigeria have faced several challenges over the years despite various reforms by the federal government to put the third tier-government on a sound pedestal. The core problems of local government are tight to suffocating and anti-development provisions in the 1999 constitution which have crippled local government and make it unable to perform its assigned functions. Among such provisions are state-local government joint account, section 162(1) which state governors use as an opportunity to swallow allocations from the federation account to local governments, non-granting of autonomy to local governments, especially, on matters of finance and non-remittance of constitutionally mandated 10% of internally generated revenues from state governments to local governments and administrative control of local

governments by State Houses of Assembly. These have made local governments incapable of performing their constitutionally mandated duties with negative impacts on the rural people.

The paper adopted the theoretical approach and survey method in its conceptual analysis of extant literature on local government administration in Nigeria, with particular reference to Provisions in the 1999 constitution as they affect service delivery at the local government level. The determinant factor in the use of this method is the nature of the subject-matter which favours reliance on secondary sources of data such as newspapers, magazines, textbooks, journals and internet materials.

## **Conceptual Explication of Issues**

### **Local Government**

Local government has attracted the attention of scholars and non-scholars over the years. This is evidenced in copious intellectual literature on the subject and continued debates in various fora, seminars and conferences across Nigeria and beyond (Akpan, 2018).

However, there has not yet been an agreement by scholars on the precise definition of local government as they have defined it variously according to their perspectives on the reason for its creation.

Makinde, Hassan and Taiwo (2016) in their contributions, describe local government as a political sub-division of a nation, legally established and empowered to substantially control local affairs, impose levies and mobilize labour for specific purposes. Ugwuanyi, Offor and Nweze (2016) on their part, define local government from the perspective of its features. According to them, a local government operates at the local or grassroots level, within a defined geographical area, with relative autonomy, or independence, has a range of constitutionally delineated functions to perform and a council of elected representatives.

Adrian (1992), in the International Encyclopedia of the Social Sciences sees local government as:

A political sub-division of a national or regional government which perform functions that are culturally defined as “local” in character, which nearly in all cases receives its legal powers from the national or regional government but possesses some degree of discretion in the making of decisions, and which normally has some taxing powers.

From whatever perspective it is viewed, a local government is meant to run the affairs of government at the local level and provide the required services to the local people to complement the efforts of the national and state governments who may not really feel the pulse of the people because of distance and lack of extensive knowledge of their actual needs.

### **Constitution**

A constitution is a body of laws and principles deliberately created to guide the running of a state. It may be written or unwritten, flexible or rigid, unitary or federal, but the aim is to determine how a state should be governed. Anifowose (1999) defines a constitution as a

collection of norms or standards according to which a country is governed. It embodies the fundamentals of a political system which has the force of laws that are enforceable by the Courts.

It is true that the 1999 constitution of the Federal Republic of Nigeria, provides for three levels of governments – federal, state and local which should be independent of each other. But as rightly noted by Akinsanya (2002), of all the three tiers of government in Nigeria, the local government is considered the least, just like the Third World country is the least in the comity of nations.

It is important to point out, as further observed by Anifowose (1999), that the constitution has a symbolic value, and like money in the bank, it is useful in relation to the satisfaction which it can provide. To what extent has the Nigerian 1999 constitution in its provisions empower local government and by implication the local people in Nigeria? This is precisely what this paper is out to unravel.

### **Democracy**

Democracy is derived from *demokratia*, the root meaning of which are *demos* (people) and *kratos* (rule). Therefore, democracy is not only a form of government in which the people rule in contradistinction to monarchies, aristocracies and gerontocracies. Democracy also entails a state in which there is some form of political equality among the people (Akinsanya, 2000). It offers an opportunity for citizens of a country to choose those they want to govern them. It is government of the people through elected representatives in the interest of the people as opposed to interest of the rulers. In Nigeria however, democracy has turned out to be government through elected representatives in the interest of their private pockets and immediate families.

### **Theoretical Framework**

The study adopted the theoretical stand of the Efficiency Services School led by Mackenzie (1961). According to this school, local government is an efficient agent for providing services that are local in nature. Proponents of this school argue that local government exists to provide services and it must be judged by its success in providing services commensurate with the standard measured by the national inspectorate.

From the stand- point of proximity, local government stands a better chance to provide some services far more efficiently than the central government. This was why Eziani (2004) states that efficient performance of services at the local government level was so compelling that if local governments did not exist, something else would have been created in its place, this underscores the importance of the third tier government in any political system.

### **Functions of Local Government Councils in Nigeria**

The Fourth Schedule of the Nigerian Constitution, 1999 outlines the following as functions of local government councils in Nigeria.

- (i) Consideration and making of recommendations to a state commission on economic planning or any similar body on the economic development of the state, particularly, in so far as the area of authority of the council and of the state are affected and proposals made by the same commission or body.

- (ii) Collection of rates, radio and television licenses.
- (iii) Establishment and maintenance of cemeteries, burial grounds and homes for destitute or infirm.
- (iv) Licensing of bicycles, trucks (other than mechanically propelled trucks) canoe, wheelbarrows and carts.
- (v) Establishment, maintenance and regulation of slaughter houses, slaughter-slabs, markets, motor parks and public conveniences.
- (vi) Construction and maintenance of roads, streets, street-lighting, drains and other public highways, parks, gardens, open space or such public facilities, as may be prescribed from time to time by the House of Assembly of a state.
- (vii) Naming of roads and streets, and numbering of houses.
- (viii) Provision and maintenance of public conveniences, sewage and refuse disposal.
- (ix) Registration of all births, deaths and marriages.
- (x) Assessment of privately-owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a state.
- (xi) Control and regulation of outdoor advertising and hoarding, movement and keeping of pets of all description, shops and kiosks, restaurants, bakeries and other places for sale of food to the public, laundries and licensing, regulation and control of the sale of liquor.

Other functions of local government councils as further stipulated by the 1999 Constitution include participation in the government of a state in respect of the following matters:

- (xii) Provision and maintenance of primary, adult and vocational education.
- (xiii) Development of agriculture and natural resources other than the exploitation of minerals.
- (xiv) Provision and maintenance of health care services; and such other functions as maybe conferred on a local government council by the House of Assembly of a state.

### **Local Government Revenue and the 1999 Constitution**

Internal sources of local government revenue as stipulated in the constitution are rates, fees and charges, earnings and profits, fines as well as those classified as miscellaneous which includes gift and donations, rents, dividends and levies. These sources of local government revenue are not viable and do not match with numerous responsibilities assigned to the third tier of government. The 10% of internally generated revenue by state government are not remitted by some states to local governments as stipulated in the 1999 constitution. These add up to financially strangle the local government system in Nigeria, hence the need to revisit the 1999 constitution and amend or remove those sections and subsections that have constituted a hindrance to the growth and development of local governments in Nigeria.

Local government councils in Nigeria equally face numerous problems in the course of generating revenues for government. Among such problems are:

- (i) Misappropriation and embezzlement of council funds by revenue collectors through issuance of fake receipts to tax payers and cornering the money into their private pockets;

- (ii) A greater percentage of Nigerians live in rural areas, and are the poor masses who are not able to pay taxes. This contributes significantly to the poor revenue base of local governments;
- (iii) Local governments lack trained personnel in the area of revenue collection. Most revenue officers in local government councils do not have the skills to develop and initiate plans to harness and exploit effectively internal sources of revenue generation in local governments;
- (iv) Internally generated sources of local governments revenue are generally poor and inelastic. Oftentimes, expenses incurred in generating revenue far exceed expected income. Local governments lack lucrative sources of revenue as the vast majority of people residence in local governments are poor; and,
- (v) Inadequate public enlightenment of the citizenry on the need to pay taxes is another problem confronting revenue generation in Nigeria's local government councils. Communication gap has made a lot of revenue sources of local government to be lost or unexploited, (Nwachukwu, 2013).

### **The 1999 Constitution and Crises of Governance in Local Government Councils**

Some sections and sub-sections in the Nigerian Constitution are saturated with contradictions which generate inter-governmental conflicts between the central government and states over the establishment, funding and supervision of local government administration in the country. These have contributed to the crises of governance in local government councils.

Section 7(1) of the 1999 constitution empowers state governments to enact legislations with regard to the establishment, structure, composition, finance and functions of democratically elected local government councils in their respective states. This, however, is subject to Section 8(6) which requires state government to approach the National Assembly for further legislation in order to make local governments created by state governments to be officially listed in the constitution. Section 8(6) empowers the states to make legislations for the states which equally include local governments (Garuba & Ameen, 2017).

The Fourth Schedule equally assigns some critical functions to local government. These provisions, however, exist only on paper, but in praxis, state governments have taken over most functions of local governments with inordinate aim of justifying stolen funds allocated to councils through the state-local government joint account (Abdulhamid & Chima, 2015).

This type of cases can be located in almost all states of the federation. As noted by Ubani (2012), the government of Lagos State constructed parks in various parts of the State with money deducted from the state-local government joint account. Also in Ondo State, government constructed a modern motor park in Akure, the capital. These are actions contradictory to the provisions in the 1999 constitution which states that local government should be in charge of executing these projects.

### **Caretaker Committees and Local Governments in Nigeria**

Some state governments across Nigeria have abused Section 7(1) of the 1999 Constitution, which makes a case for democratically elected local government councils

throughout the country. This section of the constitution has been deliberately violated, and in order to consolidate on their illegality, connive with Houses of Assembly in their respective states to pass resolutions for appointment of caretaker committees to run the affairs of local government (Garuba and Ameen, 2017).

The negative effect of this illegality on service delivery to people at the grassroots level of governance can best be imagined. Some states in Nigeria have truncated the tenures of democratically elected councils and replaced them with members of the ruling Political Party in the states as caretaker committee members when it is not the duty of state governments to determine the tenures of elected members of local government councils in the country (Wilson, 2013). This is an abuse and insult on the principle of popular participation by people at the grassroots. It is high level illegality which has continued to dent the image of Nigeria and Nigerians outside the shores of the country.

### **Financial Autonomy of Local Government**

The 1999 constitution, Section 162(6) provides that each state 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. Section 162(7) of the same constitution states that each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly. Section 162(8) states very unambiguously that:

The amount standing to the credit of local government councils of a state shall be distributed among the local government councils of that state on such terms and in such manner as may be prescribed by the House of Assembly of the state.

Section 162(3) of the constitution states that any amount standing to the credit of the federation account shall be distributed among the federal, states and local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

Section 162(5) provides that:

The amount standing to the credit of local government councils in the federation account shall also be allocated to the states for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly (Akinsanya, 2002; CFRN 1999).

The above provisions as they concern financial allocations to local governments in Nigeria have serious implications in view of the poor rural conditions of Nigerians’ across the country.

The 1999 constitution is unambiguous on the provisions concerning state – local government joint account, but despite this, some state governments have become vampires, sucking the financial blood of local government through arbitrary use of discretion to determine what is due to local governments, an action which has robbed the third tier governments of

finance, thus making them ineffective and incapable of discharging their statutory responsibilities.

It should be emphasized that Section 162(1) of the 1999 constitution which provides for the establishment of the Federation Account into which all monies accruing to the Federal government of Nigeria are deposited and Section 162(2) which stipulates that monies standing in the federation account must be allocated among the three tiers of government in Nigeria is not a solution to the problems of intergovernmental fiscal relations in Nigeria, especially as it affects local governments. States and local governments in Nigeria have no means of knowing at any particular time, how much money is in the federation account, nor is the federal government that manages the account prepared to disclose its contents to other lower tiers of government who are equally beneficiaries. They have made the federation account a “black box” or an “abracadabra” which state and local governments should know nothing about (Eminue, 2002). The “cultic” nature of the federation account which custodies the common-wealth is a slap on Nigerians and should be reversed and corrected in the interest of transparency and peaceful coexistence.

### **State Governors, Politicians and the Leadership Question**

State governors in Nigeria have fed on local governments’ funds for many years, hence their untiring commitments to anoint who become chairmen of local government councils. They have illegally continued to encroach on the affairs of local governments to the extent of taking over some of their constitutionally mandated functions. These are deliberate efforts of creating avenues to retire stolen funds that accrue to local governments from the federation account. This calls to question the leadership styles of Nigerian leaders with atavistic and inordinate tendencies to grab for themselves and their immediate families at the expense of others, especially the rural poor who are classified as the “wretched of the earth” who lives from hand to mouth (Fanon 1993; Akpan 2023).

Nigerian leaders are not very good students of history, and because they cannot remember the past, they have continued to repeat mistakes of the past (Akpan 2014). This is not good for a country like Nigeria with over 200 million people in dire need of development.

Nigerian leaders should emulate the leadership styles of people like Nelson Mandela and Mahatma Ghandi etc, who were out to save the people. The herdsman who caters for the cattle is equally a perfect example of leadership by example. As Akpan (2014) points out:

*“The herdsman who might be seen and regarded as uneducated and unexposed is a quintessence of an ideal leader, who have the interest of those he leads at hearts. This is reflected in his care for the cattle. The herdsman travels around with a number of cattle and his main objective is to satisfy their needs at all times. The herdsman travels over long distances in search of pasture for the cattle. He does not mind walking the whole day under rain or sun, and in the thick forest under inimical conditions. His uppermost and unbending desire is to fend for his cattle. Wherever there is water the*

*herdsman will move there, where there is pasture, he will go towards that direction. He does not mind threats he will encounter in the thick forest. The herdsman caters for this animal in sickness and in health. He does this without asking what those he leads will do for him. His fundamental and only obsession is what he can do to improve the welfare of the animals. That is why the cattle, though they are animals, have profound love and affection for the leader. If in the course of their sojourn in the bush, it starts to rain, the cattle will form a circle around the herdsman until the rain stops to make sure nothing harmful befalls him. The herdsman does not demand for this, but they do it because of the love they have for him. They admire, appreciate and respect the way and manner the herdsman has devoted his entire energy and resources to promote their well-being”.*

This is a great lesson for Nigerian leaders. The herdsman does not expect any votes from the cattle during elections as is the case with Nigerian leaders cum politicians who, inspite of that still go ahead to suffocate and rule the people with obnoxious policies and total neglect, especially those in rural areas of the country.

### **The Dillion Rule in America and Nigeria’s Local Government**

One hundred and fifty six (156) years ago, ninety two (92) years after America gained independence in 1776, a Judge of the Iowa Supreme Court in United States of America, Judge John Ferrest Dillion – enunciated what has become commonly known as the Dillion Rule.

It was a ruling in a case which involved the City of Clinton Versus the Cedar Rapids and Missouri River Railroads. In that case, Judge Dillion in Uchendu (2002) states:

There is no common law rights to local governments and as creatures of the State, localities may exercise only those powers expressly granted them.... they owe their origins to, and derive their powers and rights wholly from the legislature. As the state creates, so it may destroy, the local governments are tenants at the will of the legislature.

The current operation of local governments in Nigeria is in conformity with the ruling by Judge Dillion over a century ago in a different environment with totally different political history.

The relevant questions to ask are:

Where was Nigeria in 1776 when America gained independence from Britain? Did Britain colonize America, the same way it did in Nigeria? Where was Nigeria in 1868 when Judge Dillion delivered his ruling at Iowa Supreme Court that local government had no common

law rights, and as a creature of the State, it had the power to destroy it. The Nigerian government should not forget the past to avoid the pitfall of repeating it (Akpan, 2009).

American government and politics for over a century bore the imprint of its founding fathers who had nothing to do with local governments. Their main concentration was with national governments and how best to run it in the interest of American people (Iheanecho 2013). The core issue in America then, was federal-states relations, not the local government, since there was no mention of local government anywhere in the American constitution as it was left to the states “by default”. At the states level, there were considerations of how much autonomy should be granted to local government. This is a sharp contrast with the political history of Nigeria from pre-colonial to colonial and neo-colonial. Nigeria should be careful not to import hook, line and sinker other countries model of government such as the United States without comparing their political history and environment with that of Nigeria, to find out whether what fertilizes in American environment can survive in Nigeria.

Local government has been, is, and will continue to be the landlord of federal and state governments no matter how laws are twisted to cover up and present the opposite. There is no federal or state government that emerged from the sky. They are children of the third tier government who incidentally emerged from the communities. All state houses in Nigeria including the Federal Capital Territory, Abuja are located in one local government area or the other in their respective states. The importance of local governments to the citizens of any country cannot be over-emphasized as it represents the point of eventual return after retirement, old age or death. Anything short of this could bring the greatest shame of having been in exile, died in exile and buried in exile. This underscores the reason our leaders and prominent persons who die while in office or on retirement outside their states of origin are eventually brought to their home towns for burial. Examples are ubiquitous in this country.

The condition faced by local government in Nigeria despite its importance to the national economy is precisely what happens to the Niger Delta region of Nigeria which is blessed with crude oil minerals that create wealth for the country but suffers neglect, underdevelopment and deprivation (Akpan and Paul, 2023). If this is to satisfy the Biblical dictum of “to those who have, more will be given and to those who do not have, even the little they have shall be taken away and added to those who have,” then, it is wrong, wicked and discriminatory. This should be rebuked by all and government should work towards reversing the trend.

Crude oil minerals are exploited in local communities of the Niger Delta while financial allocations to the local areas are paid into a joint account with the state government controlling the funds. Permitting the Biblical theory of the “haves and have-nots” to dictate the pace of resource allocations in Nigeria is un-thoughtful and irresponsible. This is marginalization at the highest level. The little that local governments have in the oil rich region of the minority Niger Delta states should not be taken away from them and added to the majority non oil producing states.

### **Implications for the Stability of Democracy in Nigeria**

Extant literature on the subject under discussion reveals that local government holds the key to democratic stability in Nigeria. This underscores the need for the Federal and State Governments to pay more attention to the development of the third tier government and empower it with adequate financial resources to provide satisfactory services to the local people, who themselves have made wonderful sacrifices to the development of their areas through various self-help projects.

As Uya (2002) rightly observes, local government is without doubt, the cornerstone of people – centered democracy. Democracy is all about the people having opportunity to control government through free and fair elections and participate effectively in the development of their state through making good decisions and implementing same. It is the best strategy for preventing conflicts which can be achieved through the ballot.

The stability of democracy at the third tier of government in Nigeria is very fundamental to the stability of democracy in the country. As is the stand of this paper, successful democracy at the local government level has the capacity to influence democracy at the state and federal levels since a greater percentage of Nigerians including the president and his political appointees prefer to cast their ballots in their local government areas during elections.

### **Prognosis for Action**

Following from the discussion in this study, the paper makes the following prognosis for action:

- (i) The Nigerian government should revisit the 1999 constitution and expunge or amend those sections and sub-sections that have impeded the development of local government areas in the country.
- (ii) The State-Local Governments Joint Account should be abolished to allow for direct allocation of funds from the Federation Account to local government councils.
- (iii) Local governments in Nigeria, should be constitutionally removed from apron strings of state governments by making it a full independent third tier government like the state and federal governments and empowered it for effective operation.
- (iv) Local government councils should be given viable sources of generating revenue in the Nigerian Constitution to be better placed to cater for itself instead of depending solely on financial allocations from the Federation Account.
- (v) The Constitution should be amended to address ambiguities surrounding local governments such as appointment of caretaker committees, termination of tenures of local government council officials by State governors in connivance with State Houses of Assembly.
- (vi) The federal government should make it possible for local governments in the country to enjoy full autonomy in all ramifications.

### **Conclusion**

The paper discussed issues affecting local government in Nigeria as contained in the 1999 constitution. It argued against ambiguities in the constitution which should be amended or outrightly expunged in the interest of overall development of local government areas in the

country. As Adedeji (1997; 2000) observes, no democracy can be dynamic and sustainable if the system of government at the grassroots are not people – centered, participatory and accountable.

Nigerians are very brilliant and intelligent people, but often-times use these endowments negatively. Nigeria adopted English language as its lingua franca, courtesy of British colonization of the country, but the way and manner English is used in sections and subsections of the Nigerian constitution, especially in the fourth schedule which concerns local governments in the country is shocking. It is using knowledge and intelligence negatively.

The Nigerian Federation operates on a tripod of three tier structure with responsibilities assigned to each of the tiers, but it is observed, and sadly so, that these responsibilities are performed mostly through transfers from the Federal Government and to an extent by the state governments thereby disallowing the local government councils from enjoying their deserved political, administrative and fiscal autonomy.

The centralization of fiscal autonomy is a disservice to local governments in Nigeria and by implication, an invitation to underdevelopment and impoverishment of the rural people. Fiscal dependency of local governments on the federal and state governments requires a comprehensive review and restructuring if local governments must provide the needed services to the people.

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