



Restructuring, Executive Order 10 & Local Government Financial Autonomy in Nigeria

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ABSTRACT

There have been agitations for the recognition of local council as the third tier of government in accordance with the provisions of the 1999 Constitution. Many have argued that governors have mismanaged local government funds through the joint state/local government account. In this paper, we examined the quest for local government financial autonomy as the National Assembly prepares to amend the constitution in the era of restructuring. The Executive Order signed by President Muhammadu Buhari in May 2020 to out rightly grant financial autonomy to the judiciary, legislature as well as the local government councils, as the third tier of government is highly commendable. The order also mandates the Accountant-General of the federation to deduct from source amount due to state legislatures and judiciaries from the monthly allocation to each state for states that refuse to grant such autonomy. This will definitely remain one of the landmark achievements of this administration on policy paradigm shift towards a more people-friendly leadership structure of the long-running dysfunctional polity. Worthy of note is that it runs in tandem with Section 7 of the 1999 Constitution which clearly spells out the functions of the local government. These include the provision and maintenance of primary, adult and vocation education, the development of agricultural and natural resources other than the exploitation of minerals using a desk top approach, the paper examined concepts in a theoretical basis. The paper observed that before now successive state government administrations had viewed the local councils as mere appendages to the second-tier structure. To them, they are the drain-pipes for self-aggrandizement or feather their nests as part of the monthly allocations from the centre. In view of these, and in line with empirical findings during the study, the paper recommended that LGA should be allowed to develop their local administrative system that is relevant and peculiar to her needs.

Keywords: Restructuring, Executive Order 10, Federalism, Local Government Financial Autonomy, Nigeria

INTRODUCTION

The Nigerian local government system has taken different forms from one epoch to the other. The country had the pre-colonial experiences culminating in several traditional political systems known as the indirect rule. During this era, such level of government was being run via the effort of the traditional rulers or warrant chiefs, as the case might be. Thereafter, there had been series of reforms in the country's local government system. The 1976 Reform and the 1979 Constitution provided the basis on which the current local government administration was established.

It is noteworthy that, the local government structure comprises the councilors and the chairman of the council. The councilors are drawn from each political ward in the given local government, and they

constitute the local Legislative Council of that area. Whilst, the chairman is meant to function as the Chief Executive Officer of the council area, the legislative council is liable to make laws as well as reach resolutions toward the wellbeing of the members of the council.

By the establishment of the local government system, the people at the various council areas are expected to have a direct access to the government through their respective councilors. The councilors are required to listen to the yearnings of their constituents, and convey such demands to the council chairman for apt action to be taken. With the aid of this platform, the people find it very easy to freely relate to the government.

However, it is relatable to note that lately, owing to financial instability among other anomaly, the various local government administrations across the country had not fared well. In most cases, the governors in charge of the state administration tend to boycott or truncate the allocations meant for the day-to-day running of the local government. Since the local government structure lacks financial autonomy, the administrators are often denied of their lawful entitlements. This approach, which has succeeded in exploitation of the system, has over the years made the platform seem moribund. The most devastating aspect is a situation where the governor of a state would prefer to set up transition/caretaker committees to man the various local government councils in the state, rather than conducting an election that would produce elective officers meant to manage the local governments. This very impasse, which is taking place in most states across the federation, ends up making the appointed personnel appear like the governor's aides when they are constitutionally expected to act as chief executive officers. This is unarguably one of the greatest abuses witnessed by the local government system of government.

One recurring issue in the polity of Nigeria particularly since its return to civil rule is the call for local government autonomy which is more or less related to current agitation for restructuring. Known as the third tier of government, local government system in Nigeria for decades has had factors that inhibited it from reaching its potentials of driving grass root development due to interference from states and financial dependence on same. One of the items that were voted for by the National Assembly in the ongoing constitution review is the amendment seeking to grant local governments' financial autonomy. This paper seeks to explore the prospects of financial autonomy for the local government in the process.

Theoretical Perspectives on Restructuring & Local Government Financial Autonomy

There are two major contending views on this issue. These are pro-development and anti-development thesis.

Pro-development Perspective

This perspective posits that restructuring should take the form of a constitutional amendment where all the identified anomalies are critically examined and reordered. They faulted the current arrangement where the local government was tied to the apron string of the states. For this view, they are comfortable with the arrangement where local governments were entangled from the control of the state and accorded political and fiscal autonomy, which would be reflected in the constitution.

To the proponents, the components of restructuring should include de-centralisation of the powers structure to include the devolution of power to the constituent state, to the extent of creating a not so attractive centre, state police, local government autonomy, among others as is always the case in every federation. To them, Nigeria cannot persist in presenting an aberration, and seek to retain a warped federal system that is more unitary than federal, in structure and operations.

Furthermore, this thesis argued that the sort of restructuring the country deserves is a constitutional restructuring, with the objectives of achieving political cohesion and enable the redistribution of political powers and authorities, in such a manner as to give all segments of the Nigerian society a voice in the management of its affairs at various levels of government.

This, they contended, must commence with the granting of additional constitutional autonomy to the local government council, with a drastic reduction in the political control, which the state government currently has over the local government council. They added that there was also the need to reduce the mass of political authorities, which the Federal Government exercises, under the Constitution at the moment.

In view of the above, to this effect, an amendment seeking the deletion of sub-sections 5 and 6 which states that “the amount standing to the credit of the Local Government Councils in the Federation Account, shall also be allocated to States for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly” and “Each State shall maintain a State Joint Local Government Account” into which shall be paid all allocations to the LGA councils from the Federation Account and from the Government of the State” respectively.

If this comes to fruition, the constitution will provide that “Each Local Government Council shall maintain a special account to be called Local Government Council Allocation Account, into which shall be paid directly such allocations to the Local Government Council from the Federation Account, and from the government of the State, provided that there shall be no disbursement of any fund of the Local Government except by a bye-law passed by the Local Government Legislative Council. Advocates of these amendments argue that until this is achieved, Nigeria cannot be considered to be practicing federalism. They opine that the third tier of government are familiar with developmental needs in their domain and are better positioned to know where to channel their funds hence the need for financial independence.

According to former President of the National Union of Local Government Employees (NULGE), Comrade Ibrahim Khaleel, the importance of local governments cannot be over-emphasized, bearing in mind the structure and diversity of the country. The one way to accommodate this diversity is to design a local government system that is of the people instead of that owned and controlled by state governors.

Similarly, as Eme(2015, Eme, et.al, 2017) opined that local government autonomy is the panacea to the problem of local government administration in the country adding that the failure to make direct financial allocation to local government councils also inhibits local government performance. The Joint State-Local government account system denies local councils the opportunity to determine projects that are relevant to their people. The situation where state governments award uniform projects to all local government areas is a negation of the principle of grassroots development that undergirds the creation of local councils as third tier of government(Eme, 2008). Among scholars who support this view include

Anti-development Perspective

In contrast, scholars such as Itse Sagay and the Governors’ Forum among others posit that the clamour for local government autonomy is unconstitutional and an ideal. They urged the state lawmakers not to support debate on local government autonomy saying that the recognition of local government as the third tier of government in Nigeria was not even ideal. In an interview with the News Agency of Nigeria (NAN), Professor Sagay posited that Local governments in federal political systems are creations of the state hence, ought not to enjoy powers in same measures that the constitution grants to the federating units.

He opined that Nigeria’s federal system was contrary to the principle of federalism which recognized only two levels of government-federal and state governments warning that autonomy for local governments would cause problems of governance for governors adding that state assemblies that will support amending the constitution to give independence to local government do so at the detriment of their development

Supporting this view, the 1999 Constitution (as amended) provides for a three-tier government, namely federal, state and local governments. In fact, the constitution clearly defines the federating units of Nigeria and the local government areas in section 3(1) stating that there shall be 36 states in the country, and in section 3(6), that there shall be 768 local government areas in Nigeria as shown in the second column of Part 1 of the First Schedule of the constitution. But while there may be no ambiguity concerning the existence of the local government system of administration in the country, governors in virtually all the 36 states have since 1999 rendered that tier of government practically ineffectual.

The 1999 Constitution in its Fourth Schedule outlined the functions, duties and responsibilities of the local councils. Unfortunately, the same constitution is silent regarding any protective mechanism that guarantees financial and political autonomy to the councils. And to the extent that most of these crucial decisions are left at the whims of the state governors, it stands to reason that they are in control, perhaps

because they are also held to account by their people for responsibilities that ordinarily should be that of local governments.

It is within that context that we should examine the call made recently by President Muhammadu Buhari for a constitutional amendment that would free local governments from the stranglehold of state governments. Buhari while receiving officials of the Association of Local Governments of Nigeria (ALGON) said:

The relationship between the three tiers of government is not a very nice one, especially that between the local governments and the states. The states feel like they own the local governments if they are of the same party. It is worse if they are not. This is a very serious constitutional problem.

While we share the misgivings of the president that in Nigeria today, most of the governors have deliberately emasculated the local government system in their states thereby preventing its growth as a truly separate and independent tier of government, it is neither practical nor expedient to expect that there is an easy way out. As things stand today, the best way to resolve this stalemate is through a constitutional review that will redefine the role and structure of the local government.

Even though section 7 of the 1999 Constitution states categorically that the councils shall be run by elected officials, most state governors prefer to appoint “caretaker committee” members so as to control the local government funds. But it is also a fact that the states bear many of the responsibilities that ordinarily should belong to that tier of government. It is perhaps for that reason that many of the governors do not see the need for the existence of local governments as a separate arm of government. Even those who believe they should stand on their own also argue that they have to be subsumed under the state governments which then mean they cannot be autonomous.

As Eme, et. al, (2017) has consistently called for a review of the present local administration system, essentially because at stake in the whole controversy is the issue of joint accounts held by the two but administered by the states. In most cases, the governors are only willing to release funds for recurrent and administrative expenditure with only a little cash to spare for the caretaker administrators. Even in releasing such money they do it with fanfare as though they were dispensing personal favour to the individuals who relish being considered for the post of “caretaker committee” chairmen.

Adeyemo (2005) defines financial autonomy under a federal system of government that “each Government enjoys a separate existence and financial independence from the control of the other governments”. It is an autonomy which requires not just the legal and physical existence of an apparatus of government but one which should exercise financial autonomy independent from the legislative assembly, Governor and the Court. For him, Local Government financial is the freedom the Local Governments has to exercise their financial authority within the confines of the law or constitution. This is to enable the Local government to discharge legally or constitutionally assigned financial authority and responsibilities satisfactorily, without undue interference or restraint from within or higher authority (Adeyemo, 2005).

This definition argues for adequate financial autonomy for LGs within the law for the purpose of efficient and effective service delivery. Without performance, the law or constitution may not be able to guarantee even adequate autonomy for LGs as the people yearn for development. Autonomy operated within a democracy must be limited as indeed democracy limits the use of power (Eme, 2008).

Local government must exist as an appendage of state government but as financial autonomous entity in the sense of being able to receive its own allocation directly from the central purse and manage its internal revenue without interferences from state government. In the same vein, financial autonomy would only be meaningful in a situation whereby each level of government is not constitutionally bound to accept dictation or directive from another (Shuaib,2002). (Osakwe, 1999) local government financial autonomy refers to “The relative financial discretion which Local Government enjoys in regulating and managing their own affairs”. The extent to which Local Government are free from the control of the State and Federal Governments encroachment in the financial management of local affairs. Eme (1998) contends that, Local autonomy is primary concerned with the question of financial responsibilities, resources and discretion conferred on the local authorities. As such discretion and financial responsibility are at the core of local government. It presumes that local government must possess the power to take decisions

independent of external control within the limits laid down by the law. It must garner efficient resources particularly of finance to meet their responsibilities, put differently; local autonomy is the freedom of independence in clearly defined issue, areas, as well as separate legal identity from other levels of government.

It is important to note that considering the country's federalism and constitution there can never be an absolute financial autonomy because of the interdependence of the three levels of government and this bring into focus the inter-governmental relations of local government autonomy, the federal, state and local governments rule over the same population. If they are to achieve the purpose of their creation and not to waste the meager resources at their disposal, there must be a definition of the boundaries or arena of operation of each of them. In essence, local government financial autonomy in Nigerian's polity, refers to the relative financial independence of local government control by both the state and federal governments. Therefore, it is the nature and structure of transactions or interactions between the three levels of government that reveals the degree of local government autonomy Adeyemo (2005). The country's constitution clearly spelt out its position on Local Government autonomy, for instance the exit of the military and the enthronement of the democratic government in 1999 brought to the fore, again, some contradictions of local government autonomy. The provisions regarding local government administration in the 1999 Constitution created ambiguity. The 1999 Constitution by its provision in section 7 and 8 recognise the local government as a third tier of government and also guarantee it, but gives the state the autonomy to lord over the local government. Section 7 reads jointly with section 8 provides that there shall be: The system of local government by democratically elected councils (which) is by 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. The implication of these provisions according to Sagay (2006, 2008) is that local government cannot exercise the functions assigned to it in section 1 schedule 4 of the Constitution until the State House of Assembly had passed a law. The same Fourth Schedule of the Constitution also provides for "the functions of the Local Government Council to also include participation of such Council in government of a state as in respect of the following matters, education, agricultural materials resources, healthcare and any other function to it by the State House of Assembly (Onyishi, Eme, and Emeh, 2012).

In anticipation of the amendment is achieved, views remain divided; the local government system will remain nothing but a collection of hamlets controlled by state governors while rural areas stay underdeveloped. For proponents, more work needs to be done to ensure that it is endorsed at the state assemblies and subsequently made into a law. *For our purpose Financial autonomy* refers to an entity's (such as the local government Council) ability to decide freely on its internal *financial* affairs. The ability to manage its funds independently enables an institution to set and appreciate its strategic aims. Local governments Councils in Nigeria receive an important proportion of their funds from the federal government.

METHODOLOGY

The paper relies mainly on secondary sources of data collection. That is, the method consists of desk work. The secondary data used in the study were collected from research and conceptual literatures, such as journals, internets, newspapers, magazine, seminar papers and unpublished research materials among others. These methods in combination with decentralization theory as framework of analysis informed the deductions, conclusion and recommendations of the paper.

CONSTITUTIONAL AMENDMENTS AND THE QUEST FOR FINANCIAL AUTONOMY FOR LOCAL GOVERNMENT IN NIGERIA

There is no doubt that the Guidelines issued by the Federal Military Government for Local Government Reform in 1976 made strong reference to the local governments in the country as "Third Tier" of Government, but it should be emphasized that guidelines are guidelines and not laws. Neither did the Nigerian Constitutions (1979 & 1999) nor the Laws establishing Local Governments in Nigeria used the

word “autonomy” in guaranteeing the existence of Local Governments or in their actual creation. The Local Governments have not also been described by the Constitution as a Third Tier, rather, Section 7, sub-section 1 of the 1999 constitution states inter alia:

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.

Based on this eye-opener, it means that false impression has been created in the minds of the citizenry that the 1999 Constitution has provided for local government autonomy. What the Federal and State laws provided for is corporate status, making it possible for local government a legal entity that can sue and be sued, if the need arises. Lack of autonomy has given the state governments the audacity to dissolve elected councils (let alone unelected councils) at the slightest provocation through motions passed by the states House of Assembly without any pain.

In Nigeria, it is true that local governments are units which possess governmental character because the councils have been constituted with elected councillors and chairmen. Concerning substantial financial autonomy, studies by Eme (2007, 2008 and Eme, et.al, 2016) have revealed that this is equally a myth. It is true that the funding of local governments in Nigeria is a tripartite arrangement between among the Federal, State and Local Governments. The Local Governments are entitled to 20% of Federal Grants, 10% of State internally generated revenue and many sources of internally generated revenues for them to exploit.

But the effectiveness and viability of these sources of internal revenue are questionable and even the 10% from state revenues are not forthcoming In Section 7 sub-section 6(a) and (b) of the 1999 constitution of Nigeria, the following provisions were made to ensure financial vibrancy of local governments:-

Subject to the provisions of this constitution:

(a) the National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the federation.

(b) the House of Assembly of a State shall make provisions for statutory allocation of public revenue to local government councils within the state (see FGN,1999).

While local governments were celebrating the above provisions, another section of the law which deprived them of their financial autonomy emerged through introduction of the “State Joint Local Government Accounts Allocation Committee. The Revenue Allocation Act of 1981 which established above committee states as follows:

There is hereby established for each state in the Federation a body to be known as the state Joint Local Government Account Allocation Committee which shall comprise the following members, that is to say:-

(a) The commissioner charged with the responsibility for Local Government in the State to be the chairman thereof;

(b) The chairman of each local government council in the state;

(c) Two person to be appointed by the governor of the state.

(d) Two representatives of the Accountant General of the federation; and

(e) The Accountant-General of the State.

The Permanent Secretary of the State Ministry charged with responsibility for Local Government or such officer as may be designated by the said Commissioner shall be the secretary to the committee. (See Revenue Allocation Act of 1981, Official Gazette NO. 8 of 18/2/1982, Vol. 69)

From the foregoing provisions, it implies apparently that the Act’s intention was not to give financial autonomy to the Local Governments but to provide the representatives of local governments a forum to participate in the disbursement of the statutory allocation granted to them. This Joint Account Committee has now become an avenue for state governments to impose on local government ad-hoc duties and projects which they did not budget for and funds for such projects are often deducted at source without any right to oppose such decision.

The status of fiscal independence for a unit is met by the presence of one or more of the following powers:

- i. The right to determine its own budget without review or major modifications by another unit.
- ii. the right to prescribe the taxes to be levied for its support.
- iii. the right to fix and collect charges for services rendered (Eme and Onuigbo, 2017).

In view of this, efforts have been made to reform the system to drive its objectives which is grass root development as well as participation. On its part, the National Assembly has consistently taken steps to halt the dependence of LGs on states by amending sections 7, 162 of the constitution and granting the local government financial autonomy. While previous Assemblies failed at achieving this, a spark of optimism was ignited when the 8th National Assembly recently voted in favor of the amendment seeking to cut the umbilical cord that joins local governments and states which many say hinders local governments from taking its rightful position in the scheme of things. The next step in the process is transmission of the amendments to the State Houses of Assembly which must muster two-third for it to become law. Predictably, this remains a source of concern for champions of the alteration and rightly justifiable going by how things panned out in previous amendment process.

It would be recalled that in the 7th assembly, the issue of LG autonomy formed one of major contentious issue in the amendment of the 1999 Constitution. While the federal lawmakers pushed for financial autonomy to the councils to make them more effective in bringing development to the people, governors opposed it arguing that the proposed amendment to the 1999 Constitution should reflect only the federal and state as tiers of government and local governments made an extension of the ministries in the states.

The amendment scaled through in the National Assembly, but was truncated in the State Houses of Assembly after they failed to garner the two-third approval required for it to be passed into law a development that was attributed to the influence of state governors.

Since then, not much has changed on the part of governors as the Nigeria Governors Forum (NGF) remains opposed LG grant autonomy on the basis that local councils are integral part of state governments arguing that in all known federation, the federating units are usually the states and the center with no provision for local government as a federating unit. It averred that in a true federalism, issues relating to the creation, delineation and funding of local authorities is within the constitutional purview of states, which have political and judicial status that the local government do not have.

However, Governors like Ifeanyi Okowa of Delta state have thrown their weight behind the amendment. They noted that any leader who desires the good of his people and the development of the grassroots as well as the nation at large must support local government autonomy. Supporters continue to clamor for the financial independence of the third tier of government. Nigerian Labour Congress president, Ayuba Wabba, reacting to National Assembly's passage of LG autonomy, stressed that it "will free LGAs from untoward high-handedness of majority of State Governors; reduce rural-urban migration" (Egwu, Ugbomhe, Osagie and Eme, 2016)). In the same vein, president of the Nigeria Union of Local Government Employees (NULGE), Comrade Ibrahim Khaleel, urged the members of the State Assemblies to vote in favour of local government autonomy and not to bow to pressure reportedly mounted on them. According to him, "they should understand that this issue is not a political issue but a thing that has to do with development of the grassroots and the country. Besides, they are also the representative of these Nigerians who are at the grassroots and wallowing in deprivation (Eme, Anyadike, & Nwachukwu, 2017)).

CONCLUSIONS AND RECOMMENDATIONS

The Executive Order signed by President Muhammadu Buhari in May 2020 to out rightly grant financial autonomy to the judiciary, legislature as well as the local government councils, as the third tier of government is highly commendable. The order also mandates the Accountant-General of the federation to deduct from source amount due to state legislatures and judiciaries from the monthly allocation to each state for states that refuse to grant such autonomy. This will definitely remain one of the landmark achievements of this administration on policy paradigm shift towards a more people-friendly leadership structure of the long-running dysfunctional polity.

Worthy of note is that it runs in tandem with Section 7 of the 1999 Constitution which clearly spells out the functions of the local government. These include the provision and maintenance of primary, adult and

vocation education, the development of agricultural and natural resources other than the exploitation of minerals.

Other key functions include the naming of streets, numbering of houses, the provision and maintenance of public conveniences and sewage/ waste disposal. It is also the duty of local governments to undertake the registration of deaths', births and of course, marriages.

On the economic front, the responsibility of the assessment and collection of tenement rates, control and regulation of outdoor advertising licencing, assessing the health status of eateries in their areas and control of alcohol, rest squarely on their shoulders. To what extent these pertinent roles and duties have been discharged is a matter of conjecture.

Before now successive state government administrations had viewed the local councils as mere appendages to the second-tier structure. To them, they are the drain-pipes for self-aggrandizement or feather their nests as part of the monthly allocations from the federal centre. In fact, several governors climb on the roof top to clamour for restructuring along with true fiscal federalism only to turn deaf ears to the call for financial autonomy for the local governments.

To emphasize their responsibility to the people at the grassroots, President Buhari recently reminded the chairmen that should they fold their arms and allow the sharing spree to go on by the state governors, the responsibility would be on them to account for every kobo allocated to their local councils.

It is instructive that even the military administration of General Ibrahim Babangida from 1986 took bold steps to strengthen the autonomy of local government. By January 1988, good measures of autonomy came the way local government with the scrapping of the state ministries of local government throughout the country. This led to the removal of the political control and bureaucratic redtapism perpetuated by these state ministries.

Also, the 2014 National Conference recognized the Local Governments as a layer of governance closest to the people and a platform for sustainable socio-economic development and popular participation in governance at the grassroots. As important as it seems, delegates observed that the tier of government has been abused by state administrators. They believe that in tandem with the practice of a true federal system, there was the need for some safeguards that will guarantee the independence of local government. However, the National Conference said that Joint states/local government account should be scrapped and in its place, there should be a State Revenue Mobilisation, Allocation and Fiscal Commission (SRMAFC) with representatives of Local Governments and a Chairman nominated by the Governor be established. They also recommended that in "allocation of funds to the State Government, Local Government Councils and between Local Councils of a State, each SRMAFC shall apply the same distribution principles for Revenue Allocation Formula adopted by RMAFC to allocate fund from the Federation Account".

Speaker of the House of Representatives, Femi Gbajabiamila said the local government should be granted financial autonomy. He called for constitutional amendment to actualise it. The Speaker said autonomy was the only way people at the grass roots could enjoy the benefits of government.

Without an efficient local government system in Nigeria, the country would not move forward as expected. Most of the problems being faced today in Nigeria is as a result of problems we have in the local government. With an effective local government system, politically, security wise, financially, we would have a strong government. So government at the grassroot is the bedrock for rural development and that is why we are recommending local government autonomy.

Meanwhile, an alteration to section 7(1) of the constitution is aimed at strengthening local government administration in Nigeria. The new amendment, if passed into law, will insert a new clause into section 7(1). The new insertion provides that a local government council not democratically elected shall not be recognised by any authority and persons and shall not be entitled to any revenue allocation from the federation account or the state government nor exercise any function exercised by a local government council under the constitution or any law for the time being in force. The insertion further provides that democratically elected local government council shall be a tier of government in Nigeria and shall consist of executive and legislative arms.

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