

# Historicizing Nigeria's Constitutional Provision for Local Autonomy and Grassroots Development in Democratic Dispensations, 1979-1999

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## Abstract

The paper examines the constitutional legalese in Nigerian federalism that regarding actualizing local autonomy and grassroots development. It provides a historicized account of the constitutional aphorisms for state-local government relations from Nigeria's Second Republic (1979-1983), aborted Third Republic through to the Fourth Republic (1999 to date). Its overarching aim is to examine the constitutional stipulations that encompass state-local intergovernmental relations to illumine their effects on local government autonomy and ultimately grassroots development. The researched hypothetical assumption of the paper is that the constitutional codifications for state-local government relations during the understudied constitutional regimes reflect a practice of federalism as a rigid hierarchy of authority whereby the state governments usually lord themselves over the local governments. It adopts the functional dualism model as its theoretical framework and utilizes the qualitative literature review approach for analyzing data. *It finds that the constitutional language for state-local government relations in the understudied constitutions enabled the dominance and subordination of local governments. The constitutional pronouncements caused Nigerian local governments to govern as minors or agents to their principals who are the state governments. Unfortunately, the state governments implemented the letters of the constitutional provisions for local autonomy more in breach of the spirit of the letters of those constitutions. Consequently, the principal-agent model of intergovernmental relations was pervasiveness when those constitutions operated, and such a proclivity significantly*

weakens local autonomy and continues to undermine Nigeria's grassroots development. It recommends a constitutional review to enhance local autonomy and thereby accelerate the country's grassroots development.

**Keywords:** State-local government relations; 1979 Constitution; 1989 Constitution; 1999 Constitution; functional dualism model; principal-agent model

## Introduction

Overall, the measure of self-government to local governments (LG) has implications for their fortunes and capacity and in turn will determine the rate of grassroots cum holistic development of a country.<sup>1</sup> For example, frictions over areas of competencies, legislative/taxing powers, revenue allocations, and designed administrative structures that sustain inefficient public service delivery to grassroots citizens in Nigeria that flow from the state-local government relations have become pertinent. Hence, it has become pertinent to highlight those constitutional provisions that contradict the objective of bringing about autonomous local governments and also fast-track corrective measures to meet the needs of the grassroots more effectively in the country.<sup>2</sup>

A functional local government system is an indispensable element in the development process of society. The history of development, especially from the twentieth century, shows that the relegation of LG in the development planning of any social domain produces deficient solutions to the transformation of that sector. More so, in the literature, the decentralization thesis is the basic and most potent terminological

instrument to understand state government (SG) intergovernmental relations with the LG. Decentralization has been useful in explaining the need for LGs to exist and why they should enjoy requisite autonomy to perform their functions.<sup>3</sup> Decentralization refers to the distribution of power within the nation-state between higher-level and lower-level authorities. A foremost authority on the subject, Rondinelli, states that the decentralization thesis in practice explains the rationale for local government and the importance of autonomy which refers to the degree to which sub-national authorities such as LGs have discretion and freedom in exercise of their statutory powers, functions and use of resources.<sup>4</sup>

The manner of decentralization in Nigeria to realize optimal local autonomy that ought to derive from the SG-LG inter-government relations, unfortunately, seem to suffer from constitutional contradictions in the federation.<sup>5</sup> It is without a doubt that the limitations to the autonomy of local governments in Nigeria have far-reaching implications for LG's functions, revenue generation, administration, economic planning, budget authorization, and implementation in the Nigerian federation. Meanwhile, these limitations also impart negatively on the state of grassroots development of the country. It is therefore not farfetched to assume that adjectives like underdeveloped, undeveloped, least developed, and developing are applicable and will continue to apply to Nigerian grassroots domains due to the political praxis of the state-local government relations a la local autonomy.<sup>6</sup>

Any keen observer of Nigerian federalism will immediately note the challenges affecting state-local inter-governmental relations and the near absence of local autonomy as suffocated in the relations as well as LGs' disability to galvanize grassroots development effectively. There is, therefore, the need for constitutional amendments to address the challenges of local government administration in Nigeria, especially as regards the grassroots developmental functions they perform. Hence, this paper sets out to examine the inherent ambiguities of the 1979, 1989, and 1999 Constitutions and their

implications for local autonomy, and the potential for efficiency and effectiveness that LGs deploy to grassroots development within their jurisdictions.

### **Problematic of the Paper**

The politics from time in Nigeria's federal practice to date is to operate a unitary intergovernmental relations scheme between the regional and later state governments with the local government councils under them. Especially from 1979 to date, state governments justify their policies to interfere and oftentimes usurp LG's statutory cum commonplace responsibilities, particularly those with high-end earnings. Since the Second Republic through to this operating Fourth Republic, Nigerian LGs have not enjoyed autonomy specifically to legislate on their revenue earnings and expenditures and personnel administration make-up. The LGs have always experienced usurpation of their lucrative functions by the SGs, and always are dictated to regarding the provision of local infrastructure development and services delivery within their domains in Nigeria. In all these years, the state-based governing elites deliberately meddle in their administration, recruitment of local leaders, and policy decisions.<sup>7</sup>

The major problem of local autonomy and grassroots development in the Nigerian federation has been the confusion in the constitutional provisions and other policy frameworks that combined to blur the status of LG as a third tier with requisite governmental powers, status, and stamina.<sup>8</sup> One area of confusion is the implementation of those constitutional sections that provided for and guaranteed a system of democratically elected local government and at the same time grants powers to the SGs to determine a list of governmental ranges on behalf of LG. For example, functions of local government are listed as exclusive to them. Yet these 1979, 1989, and 1999 Constitutions highlight by legalese that the SG has the right to determine the functions to be performed by their LGs. Governors have seized on this contradiction to take over many constitutional responsibilities of local government that generate huge

revenues. The SGs often construe those constitutional provisions that grant them the power to superintend any LG activity the sole power to determine not only the administration but also the existence and tenure of the local councils. Such an outcome is inevitable where the constitutional legalese, language, and letter states "... government of every state shall ensure the existence of local governments under a law that defines their establishment, function, structure and administration".

Because of the above, this article research sets out to provide a historicized account of the constitutional legalese in the 1979, 1989, and 1999 Constitutions concerning autonomy for local governments to highlight their implications for grassroots development as more a duty of the LGs in the federalism of Nigeria. The paper also examines the effects of the meddlesomeness of SGs in local council affairs on the socio-economic development of the grassroots, as well as tracks the impact on SG-LG intergovernmental relations (IGR) in the country.<sup>9</sup>

### **Aim, Objective, and Hypothetical Assumption of the Paper**

*The overarching aim of the paper is:*

To examine the constitutional codifications from 1979 to 1999 that encompass SG-LG intergovernmental relations as a way to illuminate their effects on local autonomy and eventually grassroots development as a basic function of LGs in Nigeria.

*The specified objective of this paper is as follows:*

To highlight as well as examine the constitutional legalese in Nigerian federalism that have prevailed following actualizing local autonomy and grassroots development by providing a historicized account of the constitutional aphorisms for SG-LG intergovernmental relations from the Second Republic (1979-1983) through to the Fourth Republic (1999 to date) of the country.

*The specific hypothetical assumption of the paper is stated thus:*

That the constitutional codifications for

SG-LG intergovernmental relations in 1979, 1989, and 1999 Constitutions of Nigeria reflect a practice of federalism as a rigid hierarchy of authority whereby the state governments usually lord themselves over the local governments and wilfully implement the principal-agent model of inter-government relations rather than the functional dualism model.

### **Brief Literature Excursion and Theoretical Framework of Analysis**

The local government system of any society is framed by the interaction of internal and external social, legal-constitutional, political, and economic forces. Akpan and Ekanem in their study contend that in its formative stages, local governments in Nigeria like in both old and new federations were shaped by the character and values of politics of the Nigerian society.<sup>10</sup> The above-cited study shows that the dominant problem of local government efficiency in Nigeria from time immemorial has been the kind of autonomy Regional or state governments grant to the LGs. The study of **Chidiebere and Ndaguba** conclude that the principal/agent model has always dominated inter-government relations in Nigeria between SGs and LGs.<sup>11</sup>

Anyadike contends that the inter-government harmonization and synchronizations for grassroots development between the SGs and LGs are largely shaped by ethnicity and prebendal considerations, especially in local government leadership recruitment processes.<sup>12</sup> Anyadike further asserts that constitutionally designed revenue allocation sharing laws and processes threaten initiative, innovation, and autonomy, especially of local governments.<sup>13</sup> Osezua and Okudolo hold that even in the civilian transition governments of the various military regimes leading to the 1999 Fourth Republic, grassroots development and governance of local government jurisdictions even at their most benevolent points neither developed the political economy of the nation generally nor enhance local governmental autonomy.<sup>14</sup>

It is a consensus that local governments are important structures for the overall development of social systems. The existence

of capable and autonomous local governments in Nigeria is necessary therefore to fast-track the process of socio-economic development of local jurisdictions of the country. Therefore, a practical significance of a paper on such a theme is that it will draw the attention of the grassroots dwellers to the need to fully participate in local government affairs to deepen their relevance generally in the country.<sup>15</sup> Moreover, studies of this kind show how the absence of local autonomy has been impacting the development of grassroots areas and this is particularly significant because such analysis provides insight into the problem of local governance in development dialectics in Nigeria.<sup>16</sup>

Hence, studies generally about state-local government relations and the constitutional contradictions and limitations to local autonomy and grassroots development in Nigeria hold profound prospects for the country's overall development. Recommendations therefrom such studies assist to enhance intergovernmental relations in the country. Moreover, a detailed analysis of the ambiguities inherent in the 1979, 1989, and 1999 Constitutions that hindered the capacity of local governments to independently formulate and implement their development plans will go a long way to improve the relations between state governments and their local councils today. By implication too, the recommendations of those studies have several applications for the local government sector and for local administration which remains a problem in many federations.<sup>17</sup> By implication, those research reports have applications to development scholarships particularly for federal states globally.

About our theoretical framework of analysis, the functional dualism model of intergovernmental relations was adopted. This model along with the partnership and principal-agent models persist in federal practice. In a similar construct, Wright classifies the models thus: the coordinate authority model signifying the partnership model, the overlapping authority model for functional dualism model, and the inclusive authority model as in the principal-agent model.<sup>18</sup> The functional dualism model sees

intergovernmental relations as each government having functional competencies in certain critical areas as measured by their technical and fiscal abilities while also underscoring cooperation and mutual interactions on common development issues across jurisdictions of the tiers.<sup>19</sup> Protection of some measure of autonomy of the state and local governments is mostly emphasized under the functional dualism model. The model views governments as political structures that possess specified powers to execute specific functions within their statutory geographical territories.

The functional dualism model stresses that national development is best attained if each government focuses on proving public goods it can deliver based on certain strategic considerations and cooperating where necessary in areas of constitutional obligations as demarcated by law. It also underscores the need for mutual assistance where necessary, indicating that this model entertains an underlying measure of partnership. Under a functional dualism model, local governments are to be conceived as the major institutions to administer development plans for grassroots development, even more so if the development plans were initiated from the highest layer of governmental authority which is the federal government.<sup>20</sup> That is the functional-dualism or over-lapping authority model place emphasis on the interdependence of governments in a federation in which political bargaining regularly ought to happen to advance the developmental course of the state.<sup>21</sup> The functional dualism model argues that each level of government in a country has political values that each of them ensures to entrench based on their fiscal and technical competencies. Local councils sometimes have to act as agents of state and national governments under a functional dualism model.<sup>22</sup> Local government councils however in the functional dualism model of intergovernmental relations should rightly be referred to as a government, possessing all the paraphernalia to make and enforce laws within its legal boundaries.

### **Historicized Account of SG-LG Constitutional Legalese in the Understudied Epochs**

This section dissects the provisions for SG-LG relations as codified in the 1979, 1989, and 1999 Constitutions. The emphasis here is on citing the core provisions that speak to the interrelationships. The discussion of the implications of the relationships between local autonomy and grassroots development will follow in the discussion subheading of this paper.

#### *Second Republic Purview*

The 1979 Constitution midwife the Second Republic of Nigeria which began in 1979 and lasted till 1983 when it was overthrown by a military coup that brought-in the Buhari/Idiagbon junta to power.<sup>23</sup> Section 2(1) says that “*Nigeria is an indivisible and indissoluble sovereign state to be known by the name Federal Republic of Nigeria*”. Subsection 2(2) asserts that “*Nigeria shall be a federation consisting of states and a federal capital territory*”. It is under Section 3(1) that the 19 states and their local governments are mentioned, while the First Schedule Part I listed the 19 states and the 279 local government areas of the federation. The proposed nature and character of intergovernmental relations between state and local governments get specific mention in Section 7(1): “*The system of local government councils is under this Constitution guaranteed and accordingly the Government of every state shall ensure their existence under a law which provides for their establishment, structure, composition, finance, and functions of such councils*”. Another immediate reference to SG-LG relations in the 1979 Constitution is under Section 7(3) which says “it shall be the duty of a local government council within the State to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a Law enacted by the House of Assembly of the State.”<sup>24</sup>

The fiscal SG-LG inter-government relations gets mentioned under Section 149 (C – Public Revenue: Distributable Pool Income). Its Subsection 149 (4) says “*...The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the State for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly*”. The Subsection 149 (5) goes on to state 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 the Government of the State*”. Again, the shaping of fiscal state-local intergovernmental relations gets a mention in the Subjection 149 (7) thus: “*...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*”.

The opening phraseology of the Fourth Schedule (Functions of a Local Government Council) in the 1979 Constitution is highly relevant to SG-LG intergovernmental relations in that it subsumes LG functions under the state government's command. It says in the number 1 Subsection: “*... The main functions of a local government council are as follows: (a) the consideration and the making of recommendations to a State commission on economic planning or any similar body on - (i) the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and (ii) proposals made by the said commission or body*”. This phraseology can simply be interpreted to mean that even where the local economy and everything therefrom regarding grassroots development is concerned, the LGs need to first make recommendations on them and seek approval from the Economic Council Board presided by the Sgs.

*Third Republic Purview:*

That the 1989 Constitution which was meant to advance Nigeria's Third Republic was a culmination and climax of the machinery of the Constituent Assembly instituted by the Gen. Ibrahim Babaginda military government. But its implementation ultimately fell on the Gen. Sani Abacha regime to operate. Unfortunately, this Third Republic was abortive due to the death of Abacha who intended to succeed by transmuted himself from a military ruler to a civilian democratic president and other internecine political occurrences such as the civil society struggles against its take-off.<sup>25</sup>

The 1989 Constitution is a product of the military through its authorization codenamed 'Supplement to Official Gazette Extraordinary No. 29. vol.763<sup>rd</sup>, May 1989-Part A'. One of its opening letters and language under the "Promulgation of Certain Constitutional and Transitional Decrees" section states:

*"...Now, therefore, The Federal Military Government hereby decrees as follows:*

*1. For the continuance of the governance of Nigeria, the Federal Military Government shall enact, during the transition period: the following Decrees, that is — 1(a) the Local Government (Basic Constitutional and Transitional Provisions) Decree to guarantee the operation, composition, and finance of as well as the functions to be transitionally performed by the democratically elected Local Governments; the third tier of Government.*

Hence, the Chapter I, General Provisions Part I (4) provided for thus: "*There shall be 449 Local Government...*" The names of the 449 LGs are reflected in the Second Column of Part I of this Constitution.

The most noteworthy provision for SG-LG relations in the 1989 Constitution is presented in Part I Second Schedule 5 (i.e. entitled Executive powers). The law's Subsection 5(3) says "... (3) *Subject to the provisions of this Constitution, the executive*

*powers of a Local Government— (a) shall be vested in the Chairman of that Local Government Council and may subject as aforesaid and to the provisions of any law made by the House of Assembly of the State within whose boundaries the Local Government Areas situated and bye-laws made by the Local Government Council be exercised by him either directly or through the Vice-Chairman or Supervisory Councillors of the Local Government or officers in the Service of that Local Government; and (b) shall extend to the execution and maintenance of this Constitution, all bye-laws made by the Local Government Council and to all matters with respect to which the Local Government Council has for the time being power to make bye-laws ; but such executive powers shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation or of the State in which the Local Government Area concerned is situated or to endanger-assets or investments of the Government of the Federation or of the State Government in the Local Government Area".* Section 7(1) of the 1989 Constitution declares thus: "*The system of local government by democratically elected local government councils is under this Constitution guaranteed*". Subsection 7(3) states per SG-LG creation of more LG council relations thus: "*... Without prejudice to the provisions of subsection (2) of this section, the Government of a State may by Law create for any Local Government Area up to a maximum of 7 Development Areas having regard to such factors as common historical and traditional ties, geographical contiguity and administrative expedience*". The Subsection 7(5) goes on to declare: "*... It shall be the duty of Local. Government within the State to participate in economic planning and development of the Local Government Area concerned and to this end a joint economic planning board shall be established by a Law enacted by the House of Assembly of the State*". To buttress the above functional SG-LG functional relationships under the 1989 Constitution, its Fourth Schedule, Part I

(Function of Local Government) opening language is thus: "... *The main functions of a Local Government Council are as follows—(a) the formulation of economic planning and development schemes for the Local Government Area...*"

*Fourth Republic Purview:*

It is the presently operating 1999 Constitution that is modifying the Fourth Republic of Nigeria and it commenced in 1999. Not to be detained by repetitive provisions, it is helpful to state that the language of Section 7 on the democratic credential of the LGs is similar to the dictum of the 1979 and 1989 Constitutions. However, its fiscal intergovernmental relations are codified in Section 162. The subsections that define SG-LG fiscal relations are thus:“(5) *The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the State for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly. (6) 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 the Government of the State. (7) 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. (8) 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*”.

Generally, the letter of Section 7(1) of the 1999 Constitution says "... 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... administration and composition, of such councils” thereby in Section 197 provided for “**B. Establishment of Certain State Executive Bodies**197,... Subsection 1. There shall be established for each State of the

*Federation the following bodies, namely “... a. State Civil Service Commission and b. State Independent Electoral Commission”. Section 8(4) of the 1999 Constitution further asserts that: “...A bill for a Law of House of Assembly for the purpose of boundary adjustment of any existing local government area shall only be passed if a request for the boundary adjustment is supported by a two-thirds majority of members (representing the area demanding and the area affected by the boundary adjustment) in each of the following, namely i. the House of Assembly in respect of the area, and ii. The local government council in respect of the area, is received by the House of Assembly; and b. a proposal for the boundary adjustment is approved by a simple majority of members of the House of Assembly in respect of the area concerned”. The abovementioned provisions go to underscore the constitutional provisions for SG-LG relations under the 1999 Constitution.*

### **Discussion**

Inevitably, SG-LG relations under the understudied Nigerian constitutions were defined by values based on the unitary deconcentration thesis going by the language and letters for local autonomy.<sup>26</sup> Right from the inception of the Nigerian socio-political contraception, the theoretical claims of Okonjo<sup>27</sup> and Chikendu<sup>28</sup> that the higher political authorities (from the colonial masters down to regional/state-based political leaders) used local government as an instrument of containment against of their primordial, sectional and parochial interests, therefore, reigns still in Nigeria to date. According to Amah, the understudied constitutional dictums for devolution of power to local government through the SG-LG relations do not support active local autonomy and therefore have disabled optimal grassroots development.<sup>29</sup> The language and letters of those constitutions promote the dictatorship of SGs and thus occasioning development to be remote in Nigerian grassroots places.

Except in the aborted Third Republic of Nigeria, the state governments in the Second

and Fourth Republics usually abuse Section 7 of their Constitutions by not instituting democratically elected LGs. The SGs are also guilty of not holding local elections by the ethical principles of democracy. The elective principles as enshrined in the 1979 and 1999 Constitutions for the organization of local elections by the State Independent Electoral Commission (SIEC) grossly violate electoral norms, thereby forcing SGs to appoint caretaker committees or administrators to constitute the management of local governments and to govern local areas. By implication, the SG-LG relations by constitutional dictum as far as local leadership is concerned have not favoured credible local leaders and therefore impacted negatively on grassroots development.

Symptoms of unfavourable intergovernmental relations during the understudied constitutions are replete. For instance, there were constitutional controversies thereof during the Second Republic between the states and the federal government and amongst arms of governments over the power to create and appoint the top personnel of local governments, as shown variously by such litigations including *Jideonwo & others V Governor of Bendel State* (1981, I NCLR, 4), *Governor of Kaduna State Vs Kaduna State House of Assembly* (1981, II NCLR, 444), and *Balogun & other V Attorney General of Lagos State* (1981, I NCLR, 13). Also, many elected local council officials have been known to sue their SGs for summary termination of their tenures in the Fourth Republic.<sup>30</sup> In all these cases, the judicial decisions reflect the contradictions to local autonomy and compounded the roles that local governments were expected to play in the grassroots development of the country.

The major problem of local autonomy and grassroots development in Nigeria has been the confusion in the constitutional provisions that blur the status of local government as a third tier of government.<sup>31</sup> One area of confusion is the implementation of Section 7(1) of those Constitutions which provided for and guaranteed a system of democratically elected local government. The same Section

7(1) says that the SGs have the power to determine the functions of local government. Yet the Constitution itemizes exclusive and concurrent functions of local government under the Fourth Schedule. Governors have seized on this contradiction to take over many constitutional responsibilities of local government. The SGs construe the other part of that provision jointly with Section 8 to imply that they have the sole power to determine the administration, existence, and tenure of local councils since the constitution stated that the government of every state shall ensure the existence of local governments under a law that defines their establishment, function, structure, and administration. Therefore, the kernel of the prevalence of the principal-agent inter-governmental relations in the SG-LG relations in Nigeria from 1979 to date instead of the functional dualism model type is due to the language and letters of the constitutional provisions for local autonomy.

### **Concluding Remarks**

In the main, this paper explored constitutional limitations flowing from the dictums of 1979, 1989, and 1999 fundamental laws of Nigeria to the effectiveness and efficiency of local autonomy necessary not to constitute a restriction to optimal grassroots area development. It finds that these three Constitutions promoted a centralization of the power matrix whereby the SGs could lord themselves over their LGs. Dictums for local autonomy in these studied Constitutions sustains the master-servant principle which hitherto characterizes the principal-agent intergovernmental relations model. Therefore, if accelerated grassroots development is a goal to be actualized immediately in Nigeria, the demand for constitutional amendments going forward in the operation of the 1999 Constitution cannot be overemphasized. It is only by a conscious rephrasing of the constitutional language and letters for local autonomy will the spirit of SG-LG relations in Nigeria be based on the functional dualism model on inter-government relations. It is a founded truth that if Nigerian local governments enjoy requisite

autonomy as a true tier will guarantee rapid development of the grassroots happens.

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