

The Nigerian Financial Intelligence Unit (NFIU) and the Financial Autonomy of Local Governments in Nigeria: Issues and Challenges

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Abstract: The main objective of this study is to examine the implications of the financial guidelines issued by the Nigeria Financial Intelligence Unit (NFIU) on the financial autonomy of the Local Government system in Nigeria. It undertakes an historical survey into the reason for the initiation of the guidelines as well as the challenges to the realization of the goals of the NFIU guidelines by the third tier of government in the States. Anchored on the classical theory of federalism, the study which made use of primary and secondary data sources of information found out that apart statutory deductions, State governors have contrived and come out with different items using the State Joint Local Government Account to circumvent the NFIU's guidelines meant to enhance the financial autonomy of Local Government leadership. The study recommends among other things the scrapping of the State Joint Local Government Account through constitutional amendment and also the adherence to and practice of the principles of federalism by the federating units in the country.

Key words: Local Government, State Actors, NFIU guidelines, Autonomy

Introduction

Nigeria operates a three-layered federal structure with the Local Governments as the third-tier of government. The constitution apart from decentralizing some functions of the state government to the local government also empowers the National Assembly and the State Houses of Assembly to make provisions for statutory allocation of public revenue to local government councils in the federation and within the State, (Section 7, subsection 6a & b of the 1999 Constitution (as amended)). The spirit of this provision is to guarantee financial autonomy for the Local Governments to enable them provide socio-economic services to the grass root effectively. Consequently, every month, money that accrues to the Federation Account is shared to the Federal, State and Local Governments respectively based on the prevailing revenue allocation formula. However, the experience over the years is that most state Governors do not recognize Local Governments as independent entities and since the return to democratic rule in 1999, they have taken advantage of the State Joint Local Government Account (SJLGA) to short change the third tier of government by controlling their funds.

The State Governments have seen Local Governments largely as their appendage and not as autonomous entities. Despite, their monthly allocation from the Federation Account, they still dip their hands into the Joint Account and take monies belonging to the local government without accounting to anyone, (Abdulraheem, 2018). The State Governor's control over Local Government funds has no doubt denied this tier of its fiscal autonomy. Since the return to democratic rule in 1999, 'it is on record that at no time in the history of the country has there been the current level of funding accruing to the Local Governments from the Federation Account' Obasanjo (as cited Nwobashi, 2014, p.128). Yet there is very little to show for all the monies collected in the states. Statistics from the office of the Accountant-General of the Federation, show that over 14.7 trillion naira, that is (N14,708,838,964,375.70) was allocated to the 774 local government areas between 2008 and 2018 and the larger percentage of this allocation has been diverted by governors into the state account and misappropriated (Abdulraheem, 2018). This financial hemorrhage has greatly stunted development at the local government level.

To checkmate the overbearing influence of State Governors over Local Government funds, in July 2017 for instance, the National Assembly debated and passed the Constitutional amendment bill proposing local government autonomy as an independent tier of government. But unfortunately the amendment failed to get the required vote when it was transmitted to the State Houses of Assembly for voting and adoption in line with section 9(2) of the 1999 Constitution (as amended). This apparent failure to effect constitutional amendment necessitated the intervention of the Nigerian Intelligence Unit (NFIU) guidelines issued on May 2019 tagged "Guidelines to Reduce Vulnerabilities Created by Cash Withdrawals from Local Government Funds throughout Nigeria" that came into effect on June, 1, 2019. This study therefore

examines the provisions of the NFIU guidelines to determine its impact on the financial autonomy of the third tier of government in Nigeria. It also examines the challenges associated with the implementation of NFIU guidelines by Local Governments in Nigeria

Conceptual and Theoretical Framework

The Nigerian Financial Intelligence Unit (NFIU): is the Nigerian arm of the global financial intelligence Units (FIUs) domiciled within the Central Bank of Nigeria as an autonomous unit. It was initially set up under the Economic and financial crimes Commission 2004 Act and was domiciled under the EFCC. The Act establishing the NFIU was later amended and passed by the National Assembly in November 2018 which removed it under the EFCC as an autonomous agency and is now headed by a director/ chief executive officer domiciled under the Central Bank of Nigeria. The establishment of the NFIU is based on the requirements of Recommendation 29 of the Financial Action Task Force (FATF) Standards and Article 14 of United Nations Convention against Corruption (UNCAC). The NFIU was admitted into the Egmont Group of FIUs in 2007. The Egmont Group is the global body responsible for setting standards on best practices for FIUs and is made up of more than 131 FIUs from 131 jurisdictions. It was founded in 1995 to foster international collaboration in the exchange of intelligence by member states. It also supports and influences the work of FATF as it relates to the mandate of FIUs under FATF Recommendations 29 and 40. The NFIU, as a member of Egmont Group has reached out to other African FIUs by sponsoring and mentoring them to join the Egmont Group. The NFIU largely draws its powers from the Money Laundering (Prohibition) Act 2011 as amended in 2012 and the Nigerian Financial Intelligence Unit Act, 2018. The core mandate of the NFIU as required by international standard is to serve as the “national center for the receipt and analysis of: (a) suspicious transaction reports; and (b) other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of the analysis to law enforcement and anti-corruption agencies. It acts as the central body for receiving, analyzing and disseminating financial intelligence from reports submitted by financial and non-financial institutions (NFIU Act, 2018). Other functions of the NFIU include

- I. Receive currency transactions reports, suspicious transactions reports, currency declaration reports and other information relating to money laundering and terrorist financing activities from financial institutions and designated non-financial institutions.
- II. Receive reports on cross-border movement of currency and monetary instruments
- III. Maintain a comprehensive financial intelligence database for information collection, analysis and exchange with counterpart FIUs and law

- enforcement agencies around the world
- IV. Advise the government and regulatory authorities on prevention and combating of economic and financial crimes.
 - V. Provide information relating to the commission of an offence by entities and subjects linked to another jurisdiction to foreign financial intelligence unit based on the membership of Egmont Group or on the basis of bilateral cooperation.
 - VI. Promote public awareness and understanding of matters relating to economic and financial crimes, money laundering and financing of terrorists activities
 - VII. Liaise with compliance officers and ensure strong compliance culture by reporting entities

Local Government Autonomy: autonomy generally refers to self-government. An autonomous institution is one able to regulate its affairs. Agunyai, Ebirim and Odeyemi (2013) see Local Government autonomy as the freedom to the Local Government to exercise authority within the confines of the law or constitution. This is to enable it to discharge legally or constitutionally assigned responsibilities satisfactorily, without undue interference or restraint from within or higher authority. While Nwabueze (as cited in Nwobashi, 2014, p.129) conceptualizes local government autonomy under a federal structure a 'situation where by each level is not constitutionally permitted to accept dictations or directives from another' but that each must exist as an autonomous entity in the conduct of its affairs from direction of another government.

This study sees Local Government autonomy as the unfettered power of the Local Government Councils to access their funds directly from the Federation Account and use their discretion on how to manage the funds to bring development to the grass root level. This entails that no level of government should exist as an appendage of another but as an autonomous entity in the sense of being in a position to exercise its powers and functions freely.

Theoretical Framework: this study adopts the classical theory of federalism as its framework of analysis. The federal principle emphasizes non-centralization of powers whereby each component unit of a federal system has its powers and functions delineated in a constitutional document (Eliagwu, 2005). As succinctly espoused by Wheare (1964) federalism is 'the method of dividing powers so that the general and regional governments are each, within a sphere coordinate and independent'. This means that each level of government must not exist as an appendage of another government but as autonomous entity in the sense of being in a position to exercise its powers and functions freely from another government (Nwobashi, 2014). What is required is that there should be co-operation between the levels of government and no level of government is constitutionally permitted to accept dictation or directives from another.

NFIU and Financial Autonomy of Local Governments in Nigeria

Federalism therefore presupposes that there should be decentralization of power from the centre to the component units. Hence, Local Governments as the third tier of government in the country have specified functions conferred on them by the constitution and this implies, they should be free to decide and mobilize resources to execute and manage development activities within their area of jurisdiction without any interference from higher levels of government.

The NFIU guidelines represent an institutional approach to stabilize and rationalize governance at the local level. The guidelines are meant to ensure direct allocation of funds to Local Governments in order to ensure financial autonomy to Local Government leadership to enable the third tier of government to harness local resources for rapid development and ensure grassroots participation in the developmental process. This no doubt, is in line with the principle of fiscal federalism that allocates tax- raising powers and revenue rights to the component units. Nigeria practices fiscal federalism whereby money that accrues to the Federation Account is shared to the three tiers of government on the revenue sharing formula determined by the Revenue Mobilization Allocation and Fiscal Commission (RMAFC). The present arrangement is the Federal Government takes, 49.1%, 36 states take 30.9 % and the 774 Local governments share 20%.

Local Government/ State Relations in Nigeria: An overview

The rationale for Local Governments in the country is premised on the need to allow local people who understand problems confronting them better than others to address them; to facilitate the exercise of democratic self-government close to the grass-root of our society and; to promote personal liberty and participation of the people in governance (Igbuzor, 2007). This invariable makes Local governments the 'bed rock' of democracy in the country as they serve as training ground for future leaders at the State and Federal level.

Cognizant of the role of Local Governments in national development, the 1999 Constitution of the Federal Republic of Nigeria 1999, Section (7 and 8) recognized the local governments as the third tier of government in Nigeria. Section (7 and 8) provided for a system of democratically elected local government councils and that the every State should ensure their existence under a law, which provides for the establishment, structure, composition, finance and functions of such councils. But, in spite of the constitutional recognition as the Third Tier of Government, State Governors have not treated them as autonomous entities, but they see them more of appendages to the State (Agwu,2019).Hence, the relationship between the State Government and Local Government is more of 'master-servant relationship characterized by acrimony rather than cooperation. As aptly illustrated by Eliagwu (2005) the States feel that

Local governments are the most problematic tier in the federation; they lack executive capacity. Their leaders are inexperienced and mistake

federally desirable autonomy for independence or sovereignty; they even forget that the provision that the State House of Assembly can make laws specifying additional functions for them; they generate no revenue from internal sources and expect to be autonomous; ... they have so much money which they are unable to manage properly partly because of their lack of executive capacity; money spent on local government is money thrown down the drain-pipe; give such money to the state government for a more productive performance. Autonomy for the local government is autonomy for excellence in wastage and mismanagement (p.320)

Colonialism sowed the seed of today's discord between the local governments and the states (Igbuzor, 2005, Dauda, 2018). British colonial administration was based on indirect rule; an administrative system that functioned through traditional rulers and institutions. This led to the establishment of native authorities that have metamorphosed to local governments today. As restated by Igbuzor (2005) the Native Authority Ordinance recognized traditional rulers as native authorities and the main function of the native authority was the maintenance of law and order and collection of taxes. They served solely as regulatory institutions and scant attention was given to socio-economic development and the political education of the natives. More so, British colonial officials designed the system of native authority system without any plan for the political participation or the administrative recruitment of the educated elite in the native administration so they felt alienated.

Consequently, as noted by Dauda (2018, p.2) 'the Native administration was the greatest bone of contention between British colonial officials and Nigerian nationalists'. This stems from the fact that, apart from deny them a role in the system, British officials had more confidence in the traditional rulers as more legitimate representatives of the native population than the few western-educated elite. So while the British officials were scheming to trade in colonial rule for feudatory native rule, the nationalists saw decolonization as a means to end the alliance of British colonial officials and native authorities. The aftermath is that, while the colonialists were busy eulogizing the democratic and accountability values of the native authorities, the nationalists on the other hand were busy clamoring for the reform of the native authority administration to pave way for modern democratic institutions that can promote democratic local participation in the management of local affairs and accelerate socio-economic development (Dauda, 2018).

The long awaited opportunity for the nationalists to whittle the influence of the native administration came with the advent of the Lyttleton constitution of 1954 that granted self-government to the three regions in the country. The new Nigerian regional leaders whom the British colonial officials entrusted with self-government, that is Sir Ahmadu Bello, Nnamdi Azikiwe and Obafemi Awolowo without hesitation swiftly moved to decimate the native administrative structure

NFIU and Financial Autonomy of Local Governments in Nigeria

by creating the Ministry for Local Government in their regions under their direct supervision. This control and supervision was meant to ostensibly wane the powers and influence the Native Authority administration exercised under British colonial rule.

What is emphasized here is that, the long nurtured contempt over the alliance between the native authority system and the colonial officials precipitated the creation of the Ministry for Local Governments by the nationalists ostensibly to "reduce the native authority system to size" and this marked the beginning of the regions/states dominance and control of the Local Government administration. This has been underscored by Dauda (2018) that, 'the seed of today's state governors overmaster of the local government's affairs and their overbearing domination of local governance' was planted in the colonial era by the disagreement between the colonial officials and the three giant nationalist, Sir Ahmadu Bello, Nnamdi Azikiwe and Obafemi Awolowo over the role of native authorities.

Beginning from the period of regional self-government in 1954 that culminated to independence in 1960, the local government system started witnessing decline in its prestige and responsibilities (Igbuzor, 2005). In the Western region for instance, the Local Government (Amendment) Law 1960 abolished the powers of councils to levy education and general rates on the basis of need. In the Eastern region too some functions of local councils were reduced and in the Northern region, there were changes in the structure of local councils with elected or non-traditional office holders becoming members of local councils. Thus, throughout the period of the First Republic 1960- 1966, Local Governments were treated as an extension of the State government under the supervision of the Ministry for Local Government (Anyebe, 2017). This same practice continued under the civil war era until the military take-over in 1975.

General Obasanjo who took over from General Murtala Mohammed who was assassinated in 1976 initiated local government reforms that for the first time recognized Local Governments as a distinct tier of government with statutory functions. The 1976 reforms recognized local governments as the third tier of government in the country. Local governments under the reform were expected to get statutory grants from the federal government. They were also to serve as agents of development in the rural areas. Also 75 % of the members of council were to be elected through the secret ballot on non-party basis.

The military handed power to civilians in 1979. The 1979 constitution provided for the system of democratically elected local government but throughout the period of the Second Republic no elections were held and sole administrators were appointed. Throughout the Second Republic, local governments were not given the necessary administrative and financial autonomy that would enable them to operate as a distinct level of government. The Muhammadu Buhari regime that took over power in 1983 continued with the appointment of sole administrators. His successor Ibrahim Babangida initiated reforms aimed at ensuring local government autonomy. His

administration abolished the Ministry of Local Government in the States and made direct allocation of funds to the Local governments from the Federation Account without passing through the State government. In addition, the regime increased Local Government Statutory allocation from 15% to 20 % with effect from 1992 (Igbuzor). The implication of the reforms according to Babangida (as cited in Anyebe,2017) was to extricate the Local government administration from the political control by the State; give them necessary freedom to operate within the ambits of the constitution not as mere adjunct to the states but as a truly coordinate and effective level of governments. The Abacha regime that took over from General Babangida when he stepped aside in 1993 abolished all democratic structures put in place by his predecessor. The nation reverted to local government care-taker committees whose tenure was at the mercy of state military administrators.

The country returned to civil rule in 1999 and the 1999 Constitution recognizes local government as the third tier of government. But as noted by Agwu and Lawal (2019), they are not treated as an autonomous body because the functions performed by the local governments in most states are those “permitted” by the state government. Besides, statutory allocations to local governments are sent through SJLGA and states use this platform to siphon funds meant for the Local Governments. The governors have over the years exercised control over local government funds in that Joint Account without accounting to anyone. Apart from this they do not conduct local government elections and rather appoint loyalists as care-taker committee members to do their bidding without questioning them while in office (Abdulraheem, 2019). This has therefore compromised the autonomy of the local governments in the country.

The Nigerian Financial Intelligence Unit Guidelines: Issues and challenges

Due to the incessant abuse of Local Government funds by State governors without proper accountability, the NFIU in May, 2019 issued the 'Guidelines to Reduce Vulnerabilities Created by Cash Withdrawals from Local Government Funds throughout Nigeria which came into effect on June, 1, 2019. Specifically the guidelines barred State Governors from interfering with statutory allocations accruing to the local governments directly from the Federation Account; Local Government allocations are to go to their respective bank accounts; the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of the State and not for other purposes. The guidelines also stipulate a limited cash withdrawal of N500, 000 for all 774 Local Government in the country. Any transaction above this stipulated amount should go via Cheque /e-transfer.

The purpose of these guidelines is to enthrone financial transparency at the Local Government level and free funds for development at the grass root level. Each Local Government Council can now spend its funds without taking directives from governors who hijack the monthly allocations of the third tier of

NFIU and Financial Autonomy of Local Governments in Nigeria

government under the guise of State Joint Local Government Account. But there have been a mixed grill of reactions that have trailed from the NFIU guidelines.

The Senate on May 8, 2019 in reaction to the NFIU guidelines adopted a motion asking the Presidency, State Houses of Assembly, and relevant stakeholders to expedite action on financial autonomy for all the 774 Local Government Areas in the country. The Senate equally enjoined the 36 State governments and the Federal Capital Territory (FCT) to support full implementation of the guidelines to promote good governance at the Local Government Areas and restore governance at the grass root level in the country (Onanuga, 2019). The National Union of Local Government Employees (NULGE) through its National President, Comrade Ibrahim Khaleel hailed the guidelines as an indication of the renewed fight against corruption by President Muhammadu Buhari while his Trade Union Congress (TUC) counterpart, Bobboi Kaigama also supported the guidelines pointing out that the SJLGA is a threat to development at the grass root level (Onanuga). But on a general note as emphasized by Abdulraheem (2019) most Nigerians have viewed the new guidelines as just the beginning of what should be a long journey towards extricating the local government administration from the grip of State Governors who regard them as field offices for the State and this will ultimately stem corruption in Nigeria.

Contrary to public applause that the guidelines are a step in the right direction to cure corruption in the country, the State governors under the aegis of the Nigerian governors Forum (NGF) have vehemently kicked the guidelines pointing out that, the NFIU acted out of its mandate and the guidelines are an infringement of State's constitutional rights. In a letter to President Buhari dated May 15, 2019, the NGF argued that the NFIU Act 2018 did not give the body the powers that it tried to exercise in the guidelines, adding that the unit was acting in excess of its powers and in doing so, showed complete disregard for the constitution (Agbedo, 2020). The governors' based their argument on Section 162(6) of the Constitution of Nigeria, 1999 (as amended) which stipulates 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.

Hence, the governors have pointed out that Local Governments are tied to the States so the States should decide how Local Governments should spend their money. They further argued that local councils are not financial institutions but created by the constitution and therefore not under the purview of NFIU in the manner contemplated by its so-called guidelines (Agbedo, 2020). But as argued by Abduraheem (2019), this is mere mischief as the Governors downplay subsection 7 of that Section which made it compulsory for the state governments to contribute their own share of revenue to that Account for the sake of the local government administration.

Determined to continue to feed on the allocations to the Local Governments from the federation account, the State Governors apart from statutory deductions provided for under the Joint Account tagged, “First Line Charges” which include the following; Local Government Education Authority gross salary; Local Government Education Authority Overhead; Total Education Fund payable; Pension Fund allowance; Training fund and Traditional rulers (Agunyai et al, 2013). The State Governments through the SJLGA have come out with sundry items through which they siphon Local Government funds. In Benue State for instance, the Benue State Local Government Law, 2007 (as amended) has sanctioned the following deductions from local government accounts through the SJLGA that are reflected on the spread sheet for payment issued by the Bureau for Local Government and Chieftaincy

- I. Bureau for Local Government and Chieftaincy Affairs, Makurdi
- II. Benue State Local Government Pension Board
- III. Local Government Service Commission
- IV. Ministry of Science and Technology
- V. FGN/DFID/UNICEF/Sanitation
- VI. State Emergency Management Agency (SEMA)
- VII. Benue State Environmental Sanitation Agency (BESASA)
- VIII. Benue State Rehabilitation Board
- IX. Benue State Action Committee against AIDS (BENSACA)-Counterpart Fund Account
- X. Benue State Primary Health Care Board Salary Account
- XI. Benue State Universal Basic Education Board (SUBEB) Local Government Funds Account
- XII. National Union of Local Government Employees (NULGE) Account
- XIII. NULGE Welfare Account
- XIV. Medical Health Workers Union of Nigeria, Benue State Council Account
- XV. National Association of Nigerian Midwives and Nurses (NANMN)
- XVI. Local Government Second Class Ruler's Palace Account
- XVII. Local Government Traditional Council Account
- XVIII. Office of the Special Adviser to the Governor on Security Matters Account
- XIX. Benue State Inland Revenue Service (BIRS) Account
- XX. Benue State Independent Electoral Commission (BISEC) Account
- XXI. Tiv Area Traditional Council (TTC) and Idoma Area Traditional Council (ITC) Account

Most of the items on the payment spread sheet are not statutory but are merely crafted by the State government to usurp the Local Governments of their funds. What is curious about this is that, a fixed percentage of the allocation to the Local Governments is attached to each of the items by the State Government. Also, through these items, the State governors have been able to effectively monopolized access to funds allocated to the third tier of government. This

scenario in Benue State is typical of what obtains in other States of the federation. The total money deducted from the Accounts of Local Governments by State Governors in the country through these sundry items is enormous and this diminishes the ability of the local government to deliver social services and undermines the financial autonomy of Local government leadership. In short, as far as the financial autonomy of the local government system is concerned, any institutional intervention without constitutional amendment to scrap the SJLGA will be an exercise in futility. State Governments will always circumvent the good intentions by relying on Section 7 of the 1999 Constitution (as amended) which provides that

The system of local government by democratically elected 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.

Conclusion

This study has examined the provisions of the NFIU tagged “guideline to reduce vulnerabilities created by cash withdrawals from Local Government Funds throughout Nigeria” to determine its impact on the financial autonomy of the Third tier of government in the country. The study found out that though the directives represent a bold initiative to give financial autonomy to the local government leadership, but the impact has been infinitesimal as State Governors have taken advantage of constitutional ambiguities and contrived means through which they effectively siphon funds from Local Government Accounts without properly accounting for it. Based on the findings, we argue that, any reform targeted at enhancing the financial autonomy of the third tier of government in the country without constitutional amendment to scrap the SJLGA cannot achieve its intended result. Hence, the impact of the NFIU directives on Local Government autonomy has been negligible. Consequently, the following suggestions are hereby proffered

One, the State Joint Local Government Joint Account (SJLGA) should be scrapped. This will facilitate direct allocation of funds from the Federation Account to the Local governments without passing through the State government. If this is done, State Governors will not be able to have direct access to Local Government funds.

Two, the president should come out with an executive order proscribing the appointment of care-taker committees by the State Governors to run Local Government administration. It should be noted that members of these care-taker committees are usually party loyalists and can hardly challenge any demand from the State Governor. Hence, they oblige them unfettered access to the Local Government funds.

Three, steps should be taken to empower civil society organizations at the grass root to hold elected officials accountable. There should be regular town

hall meetings in which civil society organizations such as organized labour, students union; market women are encouraged to ask the political leadership of the Local Government to account for their stewardship.

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