

NIGERIA'S 1999 CONSTITUTIONS AND INTERGOVERNMENTAL RELATIONS (IGR): NEED FOR IMPROVEMENT

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Abstract: Intergovernmental Relations (IGR) describes the gamut of activities or interactions that takes place between or among the different levels of government within a country. It covers the combinations and permutations of relationship among them. Events over the years in Nigeria's federation have shown the over-dominance of the federal government in relation to IGR, which is not proper, the existing mechanisms and institutions for intergovernmental policy coordination are very weak and need to be improved and strengthened. This paper analyses the concept of IGR in relation to its meaning, kinds and approaches to it; the paper discusses the IGR with respect to Nigeria's 1999 Constitution; and finally, the paper proffers suggestions towards an improved IGR in Nigeria.

Keyword: intergovernmental relations; 1999 constitution; federalism/federation; Nigeria

INTRODUCTION

The term 'intergovernmental relations' or 'IGR' is 'commonly used to refer to relations between central, regional and local governments, as well as governments between any one level, that facilitate the attainment of common goals through co-operation' (Opeskin 2001 : 1). The term is 'commonly used to describe the interactions between the different levels of government within the state' (Adamolekun 2002: 60).

Basically, IGR refers to the communication of orders of government in a federation; it assumes the need for interdependence among or between the orders of government. However, the patterns of IGR vary markedly among federal countries (Simeon, 2004). Federalism is a result of a contract or agreement among the federating units, and the coordination among them is expedient for the smooth running of the federation. Federalism reflects the characteristics of a system that is a dynamic whole and made up of various parts. For efficiency and viability, each and every part must work co-ordinately, otherwise, the system collapses; this is true of a federation. No component part should work at cross purpose against the idea of federalism. Thus, for coordination to exist, interrelationship among the federating units is a necessity among the three levels of government of federations including Nigeria. According to Cameron (2004), the operation and practice of IGR may differ along the following lines, the degree of formal institutionalization, the extent to which they are decision-making in character, and the degree of transparency that exist in their operations.

Historical experiments in Nigeria have revealed that there exists the over-dominance of the federal government at the expense of the other levels of government regarding IGR; this is improper in an ideal federalism. Nigeria's 1999 Constitution slits the main public sector responsibilities across various government levels. Each level of government 'is required to operate within its area of jurisdiction, and any action to the contrary is null and void to the extent of its inconsistency with the law' (Okafor 2010: 127). Thus, no sole government could deliver radical improvements in service delivery on its own, which means that coordination and cooperation are pre-requisites. This notwithstanding, the existing mechanisms and institutions for intergovernmental policy coordination are very weak and need to be strengthened (Freinkman, 2007).

This paper is divided into three sections. The first section analyzes the concept of intergovernmental Relations (IGR) in relation to its meaning, kinds and approaches to it. The second section analyzes same in relation to Nigeria's 1999 Constitution while the last section proffers suggestions towards an improved intergovernmental Relations (IGR) in Nigeria.

Intergovernmental Relations (IGR): An Analysis

Cameron (1994: 23) refers to intergovernmental relations (IGR) as 'the geographical division of powers among the various spheres of government in the nation-state.' He goes further to state that the division of powers implies that each structure has a unique and independent role to play in the intergovernmental domain. In the words of Wright (1988: 1), intergovernmental relations (IGR) is 'an interacting network of institutions at national, provincial and local levels, created and refined to enable the various parts of government to cohere in a manner which is appropriate to its institutional arrangements.' According to Ogunna (1996: 350), intergovernmental relations (IGR) refers to 'the complex pattern of interactions, cooperation and inter-dependence between two or more levels of government.' From these definitions, it can be inferred that IGR refers to the gamut activities or interactions which takes place between and among the different levels of government within a country. Also covered by IGR are the combinations and permutations of relationships among these levels of government within a country. It is important to state that in IGR, each level of government has an independent and unique role to play; for example, the local level has an independent role to play with the view to achieving common goals to the benefit and well-being of the entire country.

There are four major approaches to IGR and they are the democratic approach; constitutional/legal approach; financial approach; and the normative-operational approach. The first approach to the study of IGR which is the democratic approach stresses provincial and local government's right to self determination to the extent of regarding such governmental bodies as independent institutions. In view of this, 'advocates of this approach do not support centralization of authority; rather they are stoutly in favour of greater devolution to subordinate authorities' (Hattingh 1998: 11-12). The views held by these advocates are separatist-inclined as they stress the autonomous right of existence of every level of government in itself as they emphasize, even at sacrificing community values, a regional uniqueness. This stance of 'stressing of a single value, that is, democratic principles at the expense of other values contradicts the basis of participation within a total governmental hierarchy' (Roux et al 1997: 171). As for second approach which is the constitutional/legal approach, it was historically advocated by the federalist movement in the United States in the 18th and 19th centuries; 'the movement equally accepted the existing hierarchy of governments as a constitutional fact and the Constitution which was considered as an instrument for achieving harmony, was seen as the basis for the determination of intergovernmental relations' (Roux et al 1997: 171). The democratic approach simply suggests that the Constitution and other legislative provisions of a country may be used as a point of departure in studying IGR. Corroborating this, Hattingh (1998: 11) states that 'the democratic approach accepts the factual information contained in legislation as a constant until amended by subsequent legislation; and also accepts that relations between governmental bodies exist exclusively within the framework of clauses permitting such relations.'

The third approach to IGR is the financial approach; the approach suggests an equitable sharing of revenue raised nationally among the national and other levels of government in a country. Further to this, the approach suggests the determination of each level of government's equitable share of the revenue; any other allocations accrued to it from the national government's share of the revenue; and any conditions on which such allocations may be made. It is important to note that this financial approach applies to different kinds of government; it is not associated with fiscal decentralisation in officially declared federations only; it is applicable even to non-federal states that have got no formal federal constitutional arrangement in the sense that they encompass different levels of government which

have de facto decision making authority (King, 1984; Gronrdijk, 2002; Sharma, 2005a). What this means is that while fiscal federalism in a federal state constitutes a set of guiding principles, a guiding concept that helps in designing financial relations between the national and sub-national levels of the government, fiscal decentralization in non-federal states on the other hand is a process of applying such principles (Sharma, 2005b). The last approach to IGR is the normative-operational approach; 'it scrutinizes the significance of considering all relevant norms to analyze the total operational reality of governmental relations without one aspect of governmental relations being given too much prominence at the expense of another' (Hattingh 1998: 14). Of importance are 'group norms or value objectives as the normative-operational approach consists of an investigation of what is or should be desirable' (Hattingh 1998: 14). In as much as intergovernmental relations are practiced within a public administration environment, it follows that 'there are norms and values to which it should subscribe' (Mathebula 2004: 131). In view of this, the behaviour of public officials in performance of their duties should be guided by these norms and values.

There are two kinds of intergovernmental relations and these are vertical and horizontal relations. We have vertical relations where the central government interacts with the states or localities, or where the states interact with the localities. It is horizontal relations when government at the same level interact, for example, inter-state or inter-local interactions. In a federal system, a complete analysis of IGR should at least cover the following six classes of relations: central-state, central-state-local, central-local, state-local, state-state and local.

Wright (1988) and Bogdanor (1991) state some of the essential features of IGR to include all governmental unit (central, state and local); actions of official and their attitudes (purposeful behaviour and perception of other participant in the system); regular interactions among officials (day to day contacts, practical working relationship and continuity of action patterns); all public officials (elected and appointed); and financial policy issues (intergovernmental revenues and expenditures, borrowing and debt, policy formulation and implementation policy content - distributive and regulatory issues).

Wright (1988) further identifies three different models of IGR which are coordinate or separated authority, inclusive authority and overlapping authority model. As for the coordinated or separated authority model in relation to constitutional status, national and state governments are created by the Constitution and their powers are derived therefrom; and the local governments are usually created by the state. In relation to the nature of power relations, relationships between two coequal government units are distinctly separated. The Supreme Court is the arbiter and the national-state relations are relatively modest as the two levels are only tangentially linked. Also, the powers of the two levels are exercised in a separated independent and autonomous fashion. And in relation to authority pattern, autonomy is minimal or nil in the local governments. This model is found in classical federalism and Nigeria practiced such between 1954 and 1966. As for the inclusive authority model in relation to constitutional status, the Constitution may or may not recognize and allocate powers to the levels of government. In relation to the nature of power relations, states and local governments are subordinate to the national government. They cannot challenge the centre. In relation to the authority pattern, there is no share of the state authority outside the national control and also no sphere of local authority outside the state control. This model is synonymous with centralizing federalism and Nigeria practiced it under the military rule (1966-1979 and 1983 - 1999). The last which is the overlapping model has a kind of constitutional status where the Constitution defines areas of autonomous actions by the respective jurisdictions (national, state and local). In relation to the nature of power relations, interactions among the three coequal levels of government, that is, the national, state and local relations are governed by the Constitution and each unit can defend its constitutional powers, hence, there is limited and dispersed power. In relation to authority patterns, the negotiation of the terms of exchange or agreement is interlocking, interdependent, balanced and bargaining. Also, the substantial areas of governmental operations involve national, state and local officials simultaneously. Finally, there is a high degree of potential or actual independence signalling modest and uncertain areas of autonomy. This model was envisaged under both the 1979 and 1999 constitutions.

The 1999 Constitution and IGR

The 1999 constitution metamorphosed from the 1979 Constitution. The Constitution failed to pass through the normal constitutional making process as it was drafted in hurry. General Abdulsalami Abubakar and the Provisional Ruling Council (PRC) introduced the Constitution without consulting the opinion of the public. In drafting the Constitution, they had less than six months (November 11th 1998 - May 5th, 1999) which was too short for a

country traumatized and still reeling in uncertainty and fear following the aftermath of the regime of General Abacha. The promulgation of Decree No: 24 titled "Constitution of the Federal Republic of Nigeria (Promulgation) Decree 1999" on May 5th, 1999 ushered in the Constitution. The Constitution retained the provisions of the 1979 Constitution with some amendments. It came into force on May 29th, 1999. Regarding IGR, the 1999 Constitution anticipates relationships among 811 government units, that is one central government, 36 states and 774 local government (with the inclusion of those at the Federal Capital Territory (FCT)). Section 7 (1) guarantees the system of democratically elected local government but makes it a state responsibility to ensure their existence under a law providing for their establishment, structure, composition and functions.

Roberts (1999) argues that from the viewpoint of constitutional jurisprudence, the important issue is the extent to which constitutional provisions will enhance IGR within the framework of federalism. He further assesses this in respect of the 1999 Constitution using three of the six basic combinations identified in the previous segment. These chosen three according to him are the areas where constitutional provisions defining IGR are considered significant. He lists them as national - state - local, national - state and state - local relations. In these Robert's chosen three, major areas where IGR occurs include power relations; revenue allocation; and provision of certain welfare and infrastructural facilities. Regarding allocation of power, the federal government has matters contained in Exclusive Legislative List allocated to it (Second Schedule Part 1); both the federal and state governments have matters allocated to them in the Concurrent Legislative List (Second Schedule, Part II), they include the exclusive functions of a local government council and the participatory state/local government functions (Fourth Schedule). But where there is a conflict between federal and state laws, that of the former takes preference (Section 4(5)); and also where the state executive action clashes with that of the federal, that of the latter supersedes (Section 5(3)). This implies that the federal government can intervene in any matter of public importance if it chooses to do so. It is clear that the constitutional provisions relating to power relations are not likely to enhance IGR as powers are so concentrated at the centre in such a manner capable of turning the states and by extension, the local governments to political simpletons always prostrating for political favours from the centre as 66 specific and 2 omnibus items virtually covering the entire range of public affairs are placed in the Exclusive Legislative List.

In relation to revenue sharing arrangement, the 1999 Constitution stipulates an arrangement that allows for statutory allocation of public revenue from the federation account held at the centre to states and local governments (Section 7(6); 162(1) - (8)). The federation may also give grants to a state to supplement the revenue of that state with the prescription of the National Assembly; this is called the Federal grants-in-aid (Section 164(1)). This fiscal dominance of the federal government is a very great challenge to fiscal federalism. Onimode (1999) refers to this as fiscal unitarism and according to him, it can be adduced to the unified military structure where authority and power are centralized at the top and command and instruction are dictated from top to bottom. With this, it is clear that this dominance will continue to work against the progress and development of the other lower levels of government. In respect to the provision of certain welfare and infrastructural facilities, the different levels of government inter-relate in the pursuit of certain programmes of development. Examples of such programmes include Universal Basic Education (UBE) and the Expanded Programme on Immunization (EPI). They also inter-relate in the provision of infrastructural facilities such as construction of roads electrification etc. Regarding this, it is clear that the economic predominance of the centre could engender political attitudes that are antithetical to federal practice, including fierce struggles for the control of the centre as this will result in a politicized and conflicting system of IGR with little room for cooperation (Roberts, 1999). With such predominance, the Federal Government could even behave as if it has more stakes in some state than others along political party line (Gboyega, 1990).

The provisions of the 1999 Constitution have in all, emphasized vertical interaction among the three levels of government rather than horizontal relationships. This according to Roberts (1999) could impose limitations to the extent of cooperation among the levels of government and instead promote a dependency structure that would promote the inclusive authority model of IGR. Resistance to the evolution of such structure by sub-national levels of government would result in oppositional politics and negative IGR. Hence, for an improved IGR, some amendments are necessary to Nigeria's 1999 Constitution.

Suggestions towards Amendments to the 1999 Constitution to Guarantee an Improved IGR

The suggestions below are proffered towards amendments to the 1999 Constitution to guarantee an IGR that could bring about economic prosperity and social harmony within the Nigerian state:

1. *Redistribution of Powers:* For an improved IGR to occur in Nigeria, the intergovernmental allocation of powers contained in the second schedule of the 1999 Constitution should be redistributed in favour of the state governments. The federal government's powers should be reduced such that they do not exceed those listed in the 1963 Constitution where its functions were those whose scope of benefits were national like defence, currency, foreign trade etc. By so doing, the states will be allowed a fair and just exercise of power and control over their resources in exchange for their consent to construct and sustain a united Nigeria (Wayas, 1998).
2. *Revenue Allocation Formula:* This should be reviewed in favour of the States and local government councils. They should be given a larger share of the Federation Account, something in the region of 35 to 40%. Also, the states and the local government councils should adopt a policy of self-sufficiency in resources by exploring and exploiting all available resources that can bring tangible revenues and by managing such resources wisely and in a way that the present trend of heavy dependence of the states and councils on the federal governments could be drastically reduced and reversed.
3. *Horizontal IGR:* The 1999 Constitution allows room for some inter-state political communication, e.g. through the instrumentality of National Council of State. Yet, it is possible to specify a legislative list of subjects on which states could cooperate (Roberts, 1999). If such function attract grants. Such horizontal IGR would be encouraged. Roberts (1999) further states that account should also be taken of IGR that are at once horizontal and vertical, like the type IGR resultant from the establishment of the Niger Delta Development Commission (NDDC) which involves both the federal government and a number of state governments. Such amendments should be in the second schedule.
4. *Local Autonomy:* Ab initio, the Constitution precludes autonomy for local government; the reason for this is that all good government is, of necessity local. Nigeria must continue to strive towards effective and virile Local Government. Many of the needed actions may be administrative rather than constitutional. Nevertheless, it is important for the federal government to be able to monitor IGR at all levels and take or recommend ameliorative action (Roberts, 1999).
5. *Council for IGR:* In some other federations such as the USA, Australia and India, IGR is monitored by a standing advisory council on IGR. This council recommends improvements where necessary and equally resolves any differences among the levels of government. Such a body known as the National Council on Intergovernmental Relations (NCIR) was established in Nigeria by Decree No. 89 of December 1992 but is was short-lived (Roberts, 1999). The re-establishment of the NCIR as a permanent institution under the Third schedule to the 1999 Constitution is hereby recommended.

CONCLUSION

Having identified the inadequacies in the Nigeria's 1999 Constitution in relation to IGR and having proffered suggestions towards amendments; it is hoped that concerted efforts will be made to turn the vertical interactions among the three levels of government to horizontal relations and to promote a dependency structure that would promote the inclusive authority model. To this end, a virile IGR will be enhanced.

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