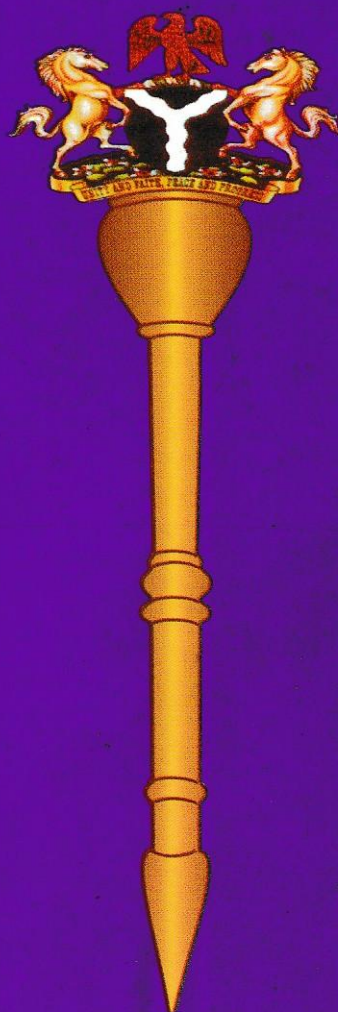


# PARLIAMENTARIANISM IN NIGERIA

## *An Odyssey in the Niger Delta*

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Edited by  
**Ekong Sampson**

*Published by*

Association of Local Governments in Nigeria (ALGON)  
Akwa Ibom State  
Plot 132, A Line, Ewet Housing Estate, Uyo

*In collaboration with*

Ministry of Local Government and Chieftaincy Affairs  
Akwa Ibom State

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ISBN 978-8012-60-4

# Parliamentary Federalism for Grassroots Governance in Nigeria: The Akwa Ibom State Experience

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## Introduction

**I**t has long been realized that governance does not and cannot mean much if the dividends of governance are not felt at the level nearest to the masses, namely, at the Local Government level where the bulk of the masses reside. This is part of the province of federalism: to allow each group to govern itself on local issues while national issues are left to the Federal Government. This means a decentralization or devolution of powers from the centre to the State and Local Governments. Apart from providing a solution to problems of domination that may arise in a plural society and diverse groups segregated by race, culture, language, religion, etc, it also caters for the peculiarly local needs. As once stated by Awolowo,<sup>1</sup>

Local Governments serve the dual purpose of being the foundation on which the state governments, and occasionally the federal government as well, touch the lives of the people most intimately. They do more. At their level, the practice of democracy is much nearer the ideal than either at the state or federal level. The Local Government ward is, in most places, small enough for its entire membership to meet and confer regularly, and for a conscientious councillor to have personal contact with every man or woman, boy or girl...

It is, therefore, clear that Local Government is a grassroots government. It is in recognition of this fact that Section 7(1) of the 1999 Constitution prescribes that

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 council.

The 1999 Constitution has, thus, specifically provided for and ensures the existence of the Local Government system. It has also expressly provided that the operators must be democratically elected. What the framers of the 1999 Constitution have left unsaid is what type of democratic government should obtain at this level of government so as to best ensure stability and development and avoid/minimize infighting for leadership. The Constitution, not having specifically provided for any democratic system nor prohibited any, nothing stops the Local Governments, or any of them in any particular State, from adopting a system different from the American-styled federalism which Nigeria has adopted. In the circumstance, the Local Governments in Akwa Ibom State have pioneeringly adopted the Parliamentary system of democracy at the Local Government level. Akwa Ibom State is not only the first but also the only State in the Nigerian federation which has adopted this system. It is intriguing to know how, or if, this pioneering model works. An evaluation and assessment of the system becomes too tempting to resist. It is also necessary to see if there are rough edges and ragged ends which may be smoothed out or filled in. This is the province of this work.

## The Beginning

The necessity for Local Governments had been appreciated right from the beginning. It

dates back to the introduction of colonial administration in Nigeria. The British officials achieved this by introducing the indirect rule system which was founded in and aimed at using the then existing Native Administrative structures, institutions and personnel to run the government at the local level. The British officials premised their preference for this system on, *inter alia*, the cost effectiveness associated with it.<sup>2</sup>

After the 1914 Lugard Constitution came the 1922 Clifford Constitution and then the Richards Constitution of 1946. It was in 1948 while the Richards Constitution was operational that Eastern Nigeria Region House reported that the theory of Native Administration pre-supposed the existence of an "inherent authority" capable of development, to such an extent that it could provide for the effective and efficient administration of the people at all levels of progress. This "inherent authority" extending little beyond the family could not actualize the desired development. This led to the enactment of the Local Government Ordinance of 1950 generally patterned after the English system of Local Government. The Western Region followed suit with the enactment of Western Nigeria Local Government Law of 1952 which took effect from February 1953. In the North, the Native Authority (Definition of Functions) Law of 1952 was enacted. Prior to these Legislative activities in the Eastern, Western and Northern Regions, the Local Government system had been in operation under different nomenclatures, styles and structures, ranging from Native Administration, County Council, District, Division, Province, Local Government, Emirate Council, and Local Authority. These grassroots authorities, by whatever name called, were borne out of the system of indirect rule, and were all part of the efforts of the colonial and post-colonial governments in Nigeria to involve, integrate and secure the participation of the local people in government and in particular bring the said government nearer to the doorsteps of these rural

people. The actors in most cases were the natives themselves who were elected or in some cases appointed to these positions but under the strict guidance of the colonial leadership at the centre. Even after the relinquishing of power in 1960 with the emergence of Nigeria as an independent State, most of these institutionalized administrative nomenclatures still remained. It was from this colonial structural debris that what we have today as Local Government system metamorphosed as the third tier of government in 1976.<sup>3</sup>

The Local Government system as we have it today was introduced officially in 1976 as a third tier of government by the then Military Government of General Murtala Mohammed. With a view to evolving a common policy directive in this regard, the Federal Government set up the Alhaji Ibrahim Dasuki panel which, after a thorough analysis of the existing structures and institutions recommended the reform, creation and adoption of the Local Government system as the third tier of government. Government in its White Paper approved the recommendation and clearly stated that the introduction of the Local Government system was essentially to bring government nearer to the people at the grassroots. This was followed with the promulgation of Decree No. 53 of 1979, the provisions of which were later made part of the 1979 Constitution.

On the creation of new States (Akwa Ibom and Katsina States) in Nigeria in August 1987, more Local Government Areas were created in line with the adjustments of the new States, and further creations and adjustments of the States and Local Government Areas were effected in 1991. The 1999 Constitution not only lists the states comprising the Federation<sup>4</sup> but also lists the number and names of Local Governments which comprise each State.<sup>5</sup>

The Legislative power of the States in relation

to the Local Government system as enshrined in Section 7(1) of the 1999 Constitution is provided in Section 4(7) of the 1999 Constitution, as follows:

The House of Assembly of a State shall have power to make laws for the peace, order and good government of the state or any part thereof.

On the strength of the above enabling constitutional provision, the Akwa Ibom State House of Assembly enacted the Local Government (Administration) Law 2003<sup>6</sup> which makes provision for Local Government administration and matters connected therewith. The Law, however, starts with a falsehood, that

There is hereby established for the State thirty one Local Government Councils (hereinafter referred to as the "councils") with their names and headquarters as specified in Schedule 1 to this Law.

The truth is that the Local Governments listed in the said Schedule 1 to the Law are an exact reproduction of those listed in Part 1, First Schedule to the 1999 Constitution and recognized under Section 3(2) of the said Constitution. They are not, thus, "hereby established" by the Local Government Law.

It is of interest that though the 1999 Constitution has guaranteed the existence of Local Governments and has ensured their financial potency by assuring them funds from the Federation Account,<sup>7</sup> the Constitution has not specified any fixed tenure or definite term for the Local Government Chairman and Councillors. This is unlike the fixed tenure constitutionally ascribed in the case of the President,<sup>8</sup> Governors,<sup>9</sup> members of the National<sup>10</sup> and State<sup>11</sup> Houses of Assembly. It is to fill, or rather to exploit this *lacuna* that the Local Government Law has provided a tenure of three years for the Local Government Council.<sup>12</sup> According to Section 2(1) of the Law:

Every Council shall stand dissolved at the expiration of a period of three years from the date the Councillors were sworn in.

However, the State House of Assembly may from time to time by a resolution of simple majority extend the period of three years, so that each period of extension shall not exceed three months.<sup>13</sup> What is immediately obvious from this legal provision is that the democratically elected Local Government officers have a shorter term than their colleagues at the State and Federal tiers of government.

A fascinating feature of the current democratic government is the introduction of the Parliamentary system at this level. To achieve this end, the Local Government Administration Law provides that each Local Government Council shall be made up of as many elected Colleges of Councillors as there are number of wards in that Local Government Area.<sup>14</sup> The elected Councillors then collectively constitute "the Colleges of Councillors" which shall, within 30 days after being elected as Councillors, elect two of their members to be the Head of Council and Deputy Head of Council, respectively.<sup>15</sup> Whenever the office of the Head of Council or Deputy Head of Council becomes vacant, the College of Councillors elects two other members to fill the vacant office.<sup>16</sup> Also, the Law allows some of the elected Councillors to be appointed as Supervisory Councillors. Section 28(1) of the Law states that

The Head of Council shall subject to the approval of the Council appoint from among the Councillors not less than 3 and not more than 5 Supervisory Councillors to head departments as may be created by him.

The Head of Council, the Deputy Head of Council and the Supervisory Councillors (along with Special Advisers and the Secretary) form the Executive Cabinet of the Council.<sup>17</sup> All Executive powers of the Local

Government Council vest in this Cabinet,<sup>18</sup> to be exercised by the Head of Council directly or through the Deputy Head of Council or Supervisory Councillors.<sup>19</sup> The Law does not require the Councillors to cease being Councillors upon their becoming Head of Council, Deputy Head of Council or Supervisory Councillor, as the case may be, and, therefore, becoming members of the Executive Cabinet. There is no doubt that they have become members of the Executive. Even the Law itself obliquely admits this fact when it says that “the Head of Council or the Deputy Head of Council shall not hold *any other executive office* ... during his tenure of office”.<sup>20</sup>

There is, therefore, a fusion of Executive and Legislative branches of government, which is typical of the British-style Parliamentary system. There is no separation of Executive and Legislative powers which is a *sine qua non* in a Presidential system of government. This recalls the practice in Britain where the Monarch (or Queen Regnant) is the head of Parliament and also the formal head of the Executive. Indeed, the “Parliament” is really “the Queen in Parliament”. She must give her royal assent to a bill before the bill becomes law, and, even the “Speaker” of the House of Commons is so called because, historically, it was his duty to give expression to the Sovereign of the Common’s wishes.<sup>21</sup> Apart from this, the Lord High Chancellor (usually referred to as “Lord Chancellor” for short) who is the head of the Judiciary and Chairman (or Speaker) of the House of Lords (i.e. the Legislature — “Upper House”), is as well a Cabinet Minister – which makes him a member of the Executive arm of government.

The shift to Parliamentary system at the Local Government level in Akwa Ibom State may have been prompted by a desire to avoid the frequent and rampant quarrels and frictions which characterized Local Government Councils and stalled grassroots development. Or, it may have been prompted by a desire for cooperation and coordination to ensure

that Local Government activities are not grounded by unnecessary conflicts which characterize strict separation of powers at this level of government. This is expected to ensure that players at this Local Government level always have the interest of the people whom they represent at the back of their minds. It is supposed that the Head of Council, knowing that he is just a first among equals, will be more guarded in his official behaviour: he has it at the back of his mind that he stood election as a Councillor and was elected as such, so that any other Councillor is as qualified as himself. This should humble him, it is supposed, and bring out the best in him, for the overall benefit of the people.

There is much to say for the propriety of adopting the Parliamentary system at the Local Government level. Section 7(1) of the 1999 Constitution, which has already been quoted *in extenso*, merely provides for a system of Local Government in a generalized manner, leaving it to the State House of Assembly to enact a law regarding the establishment, structure, composition, finance and functions of the Local Government Councils. This is not altogether surprising because, before the emergence of the 1999 Constitution there were two opposing arguments: one favours a detailed constitutional entrenchment of independent Local Government and the other prefers that the nitty-gritty be left to the State Governments to legislate, in view of the peculiar local needs and desires of Local Government.<sup>22</sup> The framers of the Constitution appear to have simply steered a middle course by loosely guaranteeing the Local Government system while the details are left to the State. The State is, in the circumstance, at liberty to decide, in its wisdom, that the Parliamentary system be adopted at this level. It is, indeed, of special significance that from the clear wording of Section 7(1) of the 1999 Constitution, the only system of Local Government recognized is that which is “democratically elected”. This, apparently, is borne out by the constitutional desire to

ensure “democratic election” and thereby prevent the appointment of caretaker or management committees or dissolution of Local Governments by the whims and caprices of the Governor alone or in collaboration with the State House of Assembly.<sup>23</sup> One may, therefore, conclude, at the risk of repetition, that so long as the officers are democratically elected at the Local Government level, Parliamentary system can be legitimately adopted.

#### *Its Operation*

At the Local Government level, both the Legislature and the Executive are fused. As for the Judiciary, there is usually none. Perhaps, this needs a bit more light before we go back to the incidence of the fusion of the Legislature with the Executive. The constitutionally recognized three arms of government are the Legislature, Executive and the Judiciary.<sup>24</sup> These three arms are present at the Federal and State tiers of government but not at the Local Government level: the judicial arm does not exist at the Local Government level. The constitutional provisions on the judicature has no reference to any category of courts being controlled by the Local Government authority. A number of reasons have been advanced for the non-inclusion of the judicial arm as part of the third tier of government. The reasons include:

- a. The uniqueness of the judicial arm from other arms.
- b. The type of personnel required to sustain the Judiciary may constitute a hindrance, as it may be difficult to get quality materials from a particular Local Government area to man their courts.
- c. The enormity of the financial involvement in maintaining the judicial arm at this level.
- d. The need to avoid reducing the standard expected of the courts in balancing the polity.

- e. Lesser activities are carried within the Local Government Council and so may not be enough to sustain the judicial arm in its day to day activities.

It is reasoned that it is due to these reasons that even the 1999 Constitution failed to provide for every aspect of the Local Government system, so that Local Governments are an appendage of the State Government. Much the same point was made by the reviewers of the 1999 Constitution in 2001 when they observed that ours is a federation in which only states are the federating units while Local Governments remain as autonomous administrative units within the states.<sup>25</sup> That is why in every State of the Federation there is a Ministry of Local Government whereas there is no corresponding Ministry of States at the federal level. This, thus, explains the absence of the Judicial arm of government in the Local Government tier.

The fusion of both the Legislature and the Executive means that the same Council has both Legislative and Executive powers. The Local Government (Administration) Law itself does not draw any distinction, for it groups the two together under the generic term “Council”.<sup>26</sup> This means that both the elected and appointed members of the Executive Cabinet also participate in law making. In other words, basically the same people exercise the Legislative and oversight functions in Section 34(1), the purely Executive functions itemized in Section 35(1) and (3), and the purely Legislative functions in Sections 36(1) and 37(2) of the Law.

As part of its power of vetting and monitoring under Section 34(1)(a) of the Law, the Councillors have continually ensured that the budget is implemented as approved. Thus, although the Head of Council may not need the approval of the Legislative Council to award contracts for projects already provided for and approved in the budget, the Legislative Council must be satisfied that the disburse-

ment of funds and administration of the projects are satisfactory. The oversight function of the Legislative Council is to check financial improprieties and excesses. This is contained in Section 34(1), thus:

34(1) The Council shall exercise the following powers and functions:

- (a) Vet and monitor the implementation of projects and programmes in the annual budget of the Local Government.
- (b) Examine and debate the monthly statements of income and expenditure tendered by the Head of Council.
- (c) Approve the appointment of Supervisory Councillors, Special Advisers and Secretary.
- (d) Execute and maintain law and order and all bye-laws made by it.
- (e) Make bye-laws on the functions of the Local Government contained in Section 43 of this Law and other laws made by the State House of Assembly; and
- (f) Any law of the State may assign other powers or functions as to it from time to time.

The proper discharge of the Legislative oversight ensures that the Council satisfactorily discharges its Executive functions as embodied in Section 35 of the Law. The only problem with this arrangement is that with the fusion of the Legislative and Executive arms, the self-same Council that executes the functions is the one overseeing itself. It is like a watchman watching himself. This inadequacy appears to make for abuse and compromise, but the State Government appears to have made up for it by the creation of agencies like the Ethical and Attitudinal Reorientation Commission (EARCOM) which routinely tours the Local Governments to assess their performance. This is not at all surprising, as the 1999 Constitution itself contemplates a high degree of cooperation between the State and Local Governments in many areas. For instance, the Local Governments jointly discharge with the State the

functions of providing and maintaining primary education and healthcare services. To this end, the Local Government Administration Law makes the salaries and allowances of primary school teachers a first charge on the State Joint Local Government Account into which are paid all allocations to the Local Governments from the Federation Account and State Government account. Section 42 of the Law, which is basically a reproduction of Section 162(6)–(8) of the 1999 Constitution, provides:

42(1) The State Government shall-

- (a) Maintain a special account to be called the "State Joint Local Government Account" into which shall be paid all allocations to the Local Governments from the Federation Account and the State Government account;
- (b) Pay to each Local Government such proportion of its total revenue in such manner as may be prescribed by the State House of Assembly; and
- (c) Monitor and provide from time to time fiscal guidelines to each Local Government.

(2) The amount standing to the credit of Local Governments shall be distributed among the Local Governments in such manner as may be prescribed by the State House of Assembly.

The provision for joint State-Local Government account is out of the recognition that the development of the State and Local Government Areas is a joint undertaking by the two tiers, and to curtail the fears which had been expressed on the level of accountability as experienced in the past military regimes.<sup>27</sup> It is, perhaps, as well that the State Governments should be involved in the disbursement of revenue to the Local Governments because should the Federal Government refuse or neglect to disburse the



amount standing to the credit of the Local Governments as required by Section 162 (5) of the 1999 Constitution, it is the State that would make a case for the disbursement. An instructive case on this is that of the *Attorney-General of Lagos State v. Attorney-General of the Federation*<sup>28</sup> in which the Lagos State Government challenged the Federal Government on the latter's withholding of the money due to Local Governments in Lagos State.

## Conclusion

Taken all in all, the Parliamentary system adopted at the Local Government tier in Akwa Ibom State, is such that the State Government's grip on the Local Governments is not only firm but pervasive. In matters of removal of the Head of Council or Deputy Head of Council, for instance, it is to the State House of Assembly that resort is made. A notice of allegation of misconduct against the holder of the office is presented to the Speaker of the House of Assembly.<sup>29</sup> The Speaker then sets up a House Investigative Panel and suspends the officer involved,<sup>30</sup> and may eventually remove him.<sup>31</sup> The high visibility of the (Speaker of the) State House of Assembly in this regard is probably because such a matter cannot go to or be handled by the Local Government Legislative Council since the Head of Council is the Local Council "Speaker" in the Parliamentary arrangement, and he cannot handle a petition against himself.

The State House of Assembly is as well involved in the Local Government Council's Legislative functions. Bye-laws made by the local Council are subject to adoptive bye-laws of the State House of Assembly.<sup>32</sup> And financially, even after subjecting Local Governments to maintenance of joint account with the State, there is the additional stipulation that Local Government Council budgets are subject to "ratification" by the State House of Assembly.<sup>33</sup> It is hoped that "ratification" as used in the Local Government Law is automatic, rather than a euphemism

for "approval". The Law also empowers the State Government to "monitor" and provide, from time to time, fiscal guidelines to each Local Government.<sup>34</sup>

In employment (labour) matters, the State Government, through its agency, the Local Government Service Commission, is the one that appoints, deploys, dismisses, disciplines and controls staff from grade level 7 and above.<sup>35</sup> Also, the Treasurer, Head of Personnel and Head of Works are all appointed by the same State agency, the Local Government Commission.<sup>36</sup> Generally, Heads of Councils are to render annual report of activities of the Local Government not only to the Council but also to the State House of Assembly.<sup>37</sup> Section 54 of the Local Government Administration Law gives the State House of Assembly an omnibus interventionist power whenever the House deems it necessary. It provides:

S. 54 When the peaceful functioning of a Local Government and its Council is hindered by internal crisis, the State House of Assembly shall have the power to intervene and by a resolution of two-thirds majority dissolve the council and administer the area for a period of not exceeding three months in the first instance pending a bye-election in the area which shall be conducted by the Electoral Commission.

To speak of Parliamentary federalism may sound like a paradox to some. The Akwa Ibom State experience, however, is that it works. Strict federalism is not necessary at the Local Government level, since its development is necessarily a joint effort with the State Government.

## Notes

1. Obafemi Awolowo (1996) *Thoughts on Nigerian Constitution*, OUP, Ibadan, pp. 148-149.
2. Bisi, A. (2003) "Towards true federalism in Nigeria", *Nigerian Bar Journal*, Vol. 1, No.

- 2, April, p. 205.
3. Sule-Gambari (2004), "The Role of Traditional Institutions in a Democratic System", in Gidado et al (eds): *Constitutional Essays in Honour of Bola Ige* at p. 210.
  4. Section 3(1) of the Constitution and First Schedule, Part 1 of the Constitution.
  5. Section 3(2) of the Constitution and First Schedule, Part 1 of the Constitution.
  6. This repeals the earlier Local Government Law, Cap 8, Laws of Aks.
  7. Section 162(3) & 5 of the Constitution.
  8. Section 135.
  9. Section.
  10. 180 Section 68.
  11. Section 109.
  12. Indeed, a three year tenure was much earlier prescribed by Section 7 of the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36 of 1998, and although that Decree was later repealed by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999, the repeal was held not to affect the tenure of officers elected to the Local Government councils by virtue of Section 6(1) of the Interpretation Act Cap 192 Laws of the Federation 1990. Thus, though three years has not been constitutionally provided for, it has been so provided statutorily. See: *A-G of Abia State & Ors. V. A – G of Federation* (2002 6 NWLR (Pt.763) 264 at 365 Section 2(1) & (2) of the Local Government Law.
  13. Section 2(1) & (2) of the Local Government Law.
  14. Section 3.
  15. Section 18(1) Section 18(2).
  16. Section 18(2) Section 30.
  17. Section 30 Section 33(1).
  18. Section 33(1) Section 33(2).
  19. Section 33(2).
  20. Section 22 (Emphasis mine).
  21. Hollis, C: *Parliament and its Sovereignty*, London: Hollis & Carter, 1973, at pp. 11, 37.
  22. Joyce & Igweke (1982) *Introduction to the 1979 Constitution*, Macmillan Nigeria, p. 96.
  23. J. Finine Fekumo (2002) *Relationship between Federal and State Governments: Local Government*, F & F Publishers. Port Harcourt at p. 13.
  24. Section 4, 5 & 6 of the 1999 Constitution.
  25. *Report of the Presidential Committee on the Review of the 1999 Constitution*, volume 1, Main Report, at p. 13.
  26. Section 57 of the Law.
  27. Report of the Presidential Committee on the Review of the 1999 Constitution, Volume 1, main Report, at p. 13.
  28. *A-G of Lagos State v. A-G of the Federation* [2004] 18 NWLR (pt. 904) 1 (SC).
  29. Section 23(2), of Local Government (Administration) Law.
  30. Section 23(6), *ibid.*
  31. Section 23(9), *ibid.*
  32. Section 37(1).
  33. Section 41(3).
  34. Section 42(1) (c).
  35. Section 48(1).
  36. Section 49(1) & (2).
  37. Section 53(1).