

## CONSTITUTIONAL PROTECTION OF LOCAL GOVERNMENT FINANCES: AN IMPERATIVE TO SUSTAINABLE DEVELOPMENT OF THE RURAL AREAS IN NIGERIA\*

### Abstract

*Prior to the Local Government Reforms in 1976, the various segments of the country operated different kinds of grass root administration. The North operated the Native Authority System and the South operated the Divisional System. The 1976 Reforms unified the various grass-root administrations into the Local Government System for the whole country. This saw to the establishment of the Local Government as a Third Tier of Government. There is no denying the fact that in the 1970' s and 1980' s, the Local Government Unit of Administration blossomed with activities and the rural man can feel the pulse of government. The State and Federal Government may be far from him, but he is not too worried because he can see dividends of democracy, Trunk C roads are regularly maintained, fertilizers are provided just to mention a few. The Local Government headquarters were beaming with activities. However, with the advent of Constitutional democracy of the Fourth Republic in 1999, the developmental strides of the Local Government became comatose. This is largely due to the fact that the Finances of Local Government were hijacked by the State Governments. The Local Government headquarters suddenly became a shadow of itself. Only salaries are paid and so staff only come to the headquarters at the end of the month to collect their salaries which in some cases are paid on percentage. Constitutional guarantees to the finances of Local Government and how they can be sustained for the needed development of rural areas is the crux of this paper. This study examined the laudable objectives for the establishment of the Local Government System, how they impacted on the development of Local Governments. This study adopted the doctrinal method of research and made a finding that upon realizing how the states hijacking of Local Government finances have impacted negatively on Local Governments, the Federal Government through Executive Order 10 made effort to safeguard the Local Government system by protecting the finances of Local Governments. If the rural areas should witness developments again, there is the need to plug the loopholes in the Constitution associated with the looting of Local Government finances. This study makes a case for a Local Government ombudsman that will be saddled with the responsibility of protecting the Local Government system and by extension the Local Government finances.*

**Keywords:** Constitutional Protection, Finances, Imperative, Sustainable Development, Rural Areas.

### 1. Introduction

The system of Local Government as a Third tier of Government presently constituted came into being in 1976 through the reforms carried out by the Obasanjo military regime, through the instrumentality of the Dasuki Panel Recommendation. Prior to the 1976 unified Local Government system for the whole country, the various regions in Nigeria operated different systems of local administration. The Northern region operated the Native Administration. The East and Western regions operated the Divisional System and with the creation of Midwestern region, it operated the Divisional system<sup>1</sup>. The military administration of Olusegun Obasanjo established the unified Local Government system in Nigeria. The number of Local Governments created in 1976 were 299 by virtue of the Dasuki Committee recommendation, and later the Obasanjo administration created more Local Government and made it 336. The Dasuki Committee recommended the following functions which were accepted by the then Federal Military Government:

- i. Basic environmental sanitation and other aspects of preventive health care.
- ii. Provision of maternity centres, dispensaries, leprosy clinics and health centres.
- iii. Roads and drainages, excluding Federal and state roads.
- iv. Construction and maintenance of primary schools; and
- v. Maintenance of law and order<sup>2</sup>.

The Dasuki Committee also recommended and the Government accepted the following as the primary responsibilities of Local Government.

- a. Making appropriate services and development activities responsive to local wishes and initiatives by devolving or delegating them to local bodies of representatives.

\*By **Danjuma G. SHIGABA, PhD**, Senior Lecturer, Department of Public and International Law, Faculty of Law, Nasarawa State University, Keffi, Nasarawa State, Nigeria;

\***Alexander A. EPU**, Lecturer, Department of Public and International Law, Faculty of Law, Nasarawa State University, Keffi, Nasarawa State, Nigeria; and

\***Hilary OKOLOMA**, Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University Awka Anambra State

<sup>1</sup> O. O Adeyemi, Local Government Administration in Nigeria: A Historical perspective (Journal of Public Administration and Governance [www.researchgate.net](http://www.researchgate.net) > Accessed on 16/5/21

<sup>2</sup> Ibid.

- b. Facilitating the exercise of democratic self government close to the Local level of our society and encouraging initiatives and leadership potentials; and
- c. Mobilizing human and material resources through the involvement of members of the public in their local development<sup>3</sup>.

In order to achieve its aim of grass-root development, the Dasuki Committee recommended the allocation of certain percentage of the revenue of the Federation to the Local Governments<sup>4</sup>. Through State Edicts, the powers and functions of Local Government Councils were defined and these include maintenance of law and order, levy of rates and fees in specified items such as bicycles, canoes etc, provision and maintenance of roads and markets, motor parks, health services etc. From 1978, the rural areas witness tremendous development, as they set to work in the area of their mandate. Local Government headquarters opened up to planned towns with roads and other amenities being put in place. With the coming into effect of the 2<sup>nd</sup> Republic, the Local Government system was guaranteed in the 1979 Constitution. The Constitution provides as follows:

The system of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed; and accordingly, the Government, of every state shall subject to Section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils<sup>5</sup>.

It shall be the duty of a Local Government Council within the state to participate in economic planning and development of its area of sphere and to this end an economic planning board shall be established by a law enacted by the House of Assembly of the state<sup>6</sup>.

The Constitutional provision is meant to guarantee sustainable rural development. The operation of the 1979 Constitution took 4 years 3 months and it was toppled with the military coup of the then Major General Muhammadu Buhari on 31<sup>st</sup> December 1983. The military regimes before the coming into effect of the 1999 Constitution continued with the good intendment of Local Government creation i.e for grass root development. Thus in 1986, the Babangida military administration inaugurated a Political Bureau to fashion out a political future for Nigeria including the future of the Local Government system. The Bureau agenda for Local Government came under the sub title of “Local Government for Development”<sup>7</sup>. Some of the major recommendations of the Bureau which were implemented by the Babangida regime were:

- i. Abolition of the title of sole administrator and its replacement with “Chairmanship” and “Councillorship” system, thus creating an Executive Chairman and a Legislative Arm at the Local Government.
- ii. Creation of a Directorate for Local Government in each state which stipulates fiscal structure and internal audit Section for proper accountability of Local Government finances.
- iii. Direct allocation of revenue from the federation account to the Local Government account unlike the hitherto practice of routing it through the states.

In fact, the Babangida’s regime had a favourable disposition to Local Government Administration thus it made elaborate provisions for a Local Government system in the now aborted 1989 Constitution. The said Constitution provided as follows:

Section 7 (1) The system of Local Government by democratically elected Local Government Councils is under this Constitution guaranteed.

(2) There shall be 449 Local Government Areas in Nigeria as named in the second column of Part I of the First Schedule to this Constitution and each of the Local Government Areas shall be the only unit in respect of which the Government of a State is empowered to establish an authority for the purpose of local government.

(3) Without prejudice to the provisions of sub-Section (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.

(5) 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 Law enacted by the House of Assembly of the State.

---

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Section 7 (1) of the 1979 Constitution, Federal Republic of Nigeria.

<sup>6</sup> Section 7 (3), Ibid.

<sup>7</sup> E. J. Egbe, *Native Authorities and Local Government Reforms in Nigeria since 2014 (IVSR Journal of Humanities and Social Service)* available @ [www.iosrjournal.org](http://www.iosrjournal.org) Accessed on 16/5/2021

(7) The functions to be conferred by Law upon Local Governments shall include those set out in Part I of the Fourth Schedule of this Constitution.

(8) Subject to the provision of this Constitution –

- a. The National Assembly shall make provisions for statutory allocation of public revenue to Local Governments in the Federation; and
- b. The House of Assembly of a State shall make provisions for statutory allocation of public revenue to Local Governments within the State.’

In its continued legacy, the Abdulsalam regime enacted the Taxes and Levies (Approved List for collection) Decree<sup>8</sup> which made elaborate allocation of taxable areas to the Local Government; all in a bid to guarantee funding to Local Governments. These include: -

1. Shops and kiosks
2. Tenement rates
3. On and off liquor License fees
4. Slaughter slabs fees
5. Marriages, birth and death registration fees.
6. Naming of street registration fees excluding any street in the state capital
7. Right of occupancy fees on lands in rural areas excluding those collectable by Federal and state Government.
8. Market taxes and levies excluding any market where state finance is involved.
9. Motor parks levies
10. Domestic animal license fees
11. Wheel barrow and cart fees
12. Cattle tax payable by cattle farmers only
13. Merriment and road closure levy
14. Radio and television transmitters
15. Vehicle radio license fees (to be imposed by the Local Government of the state in which the car is registered).
16. Wrong parking charges
17. Sewage and refuse disposal fees
18. Customary burial ground permit fee
19. Religious places establishment permit fee
20. Signboard and advertisement permit fee<sup>9</sup>

The above areas of revenue acquisition for Local Government were maintained even under the 4<sup>th</sup> Republic between 1999 – 2007. However, from 2007 to the present, there has been a great erosion on Local Government finances by State Governments using the same 1999 Constitution to the detriment of rural areas development. In fact, Local Government as presently constituted is a shadow of itself. They are just like a Department of the state government, not an independent 3<sup>rd</sup> tier of government. This necessitated the enactment of the Nigeria Financial Intelligence Unit Act 2018, which Unit enacted the Rules on Local Government Finances by States. The abuse of Local Government finances by States has no doubt negatively impacted on grass root development. This paper therefore sought to engage a discourse in how the finances of Local Government can be constitutionally protected to enhance sustainable development in the rural areas in Nigeria.

## 2. Conceptual Clarifications

In this discourse, there are concepts worth defining for a proper understanding of the context in which they are used in this discourse. The concepts include ‘Constitutional Protection’, ‘Local Government’; ‘Finances’; ‘Sustainable Development’; and “Rural Areas” .

### Constitutional Protection

‘Constitutional protection’ has two words, “Constitutional’ and “Protection” . ‘Constitutional’ according to Black’s Law Dictionary is an adjective relating to a constitution. It means that which is proper and valid under a constitution<sup>10</sup>. ‘Protection’ according to dictionary.com is the act of protecting or the state of being protected; preservation from injury or harm<sup>11</sup>. According to Black’s Law Dictionary, 9<sup>th</sup> Edition, Constitutional Protection

---

<sup>8</sup> Taxes and Levies (Approved List for collection) Decree, No. 21 1998.

<sup>9</sup> These taxable areas were later inserted in the 4<sup>th</sup> schedule of the 1999 Constitution.

<sup>10</sup> B.A. Garner, (Editor in Chief) (Minnersota, West publishing co, 9<sup>th</sup> edition, 2004) p. 354

<sup>11</sup>See B. Kariger & D. Fierro, Dictionary.com Meanings & Definitions of English Words <http://www.dictionary.com/> accessed on 16th May 2023

is akin to Constitutional freedom i.e. a basic liberty guaranteed by the Constitution<sup>12</sup> or Bill of Rights, such as the freedom of speech. In this paper, “Constitutional Protection” is therefore the preservation or protection of Local Government Finances enshrined in the Constitution such that the states cannot temper with it.

### **Local Government**

Local Government according to Section 328 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) includes an Area Council. Without doubt, this Constitutional definition is inadequate, and so we need to resort to other definitions. The Black’s Law Dictionary defines Local Government as the government of a particular locality, such as a city, country or parish; a governing body at a lower level than the state government<sup>13</sup>. According to Akande Local government is that level of government closest to the people and it is vested with same powers to exercise control over the affairs of people in its domain<sup>14</sup>.

### **Finances**

According to Corporate Finance institute.com Finance is the management of money and includes activities such as investing, borrowing, lending, budgeting, saving and transacting<sup>15</sup>. Britanica.com on the other hand defines finance as the process of raising funds or capital for any kind of expenditure<sup>16</sup>. In the context of this paper finances means the Funds Constitutionally guaranteed to Local Government in Nigeria.

### **Sustainable Development**

According to Britanica.com, sustainable development is development that meets the needs of the present without compromising the ability of future generation to meet their own needs<sup>17</sup>. It is the quest for sustainable development that the United Nation has developed the Sustainable Development Goals (SDG’ s) at the United Nations Conference on Sustainable Development in Rio de Janeiro in 2012. The objective was to produce a set of universal goals that meet the urgent environmental, political and economic challenges facing our world. The SDGs replace the Millennium Development Goals (MDGs), which started a global effort in 2000 to tackle the indignity of poverty. The MDGs established measurable, universally-agreed objectives for tackling extreme poverty and hunger, preventing deadly diseases, and expanding primary education to all children, among other development priorities<sup>18</sup>. In the context of this paper for sustainable development to occur at the Local Government level, its finances should be constitutionally protected.

### **Rural Areas**

According to the Health Resources and services Administration of the United States Department of Health and Human Services defines the word rural as encompassing all population, housing and territory not included within an urban area mostly characterized by low population density small settlements; agricultural Areas and forestry<sup>19</sup>. In the context of this paper, rural areas is where the Local Governments are mostly situated with the exception of city local governments. For the rural areas to be economically developed, the finances of local government must be protected through the Constitution.

## **3. Finances of Local Government under the Constitution of the Federal Republic of Nigeria 1999**

The Constitution of the Federal Republic of Nigeria 1999 establishes the Local Government system by virtue of Section 7(1) thereof. It provides thus:

the system of Local Government by democratically elected Local Government Council 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 function of such council<sup>20</sup>.

By the above provisions, States are enjoined to enact laws which shall guarantee the existence of Local Governments and the said law shall spell out their structure, composition, finances and functions of such council. By subsection 3 thereof, it provides thus:

---

<sup>12</sup> Garner, (n.11) p. 354.

<sup>13</sup> Ibid, p. 764, 1022.

<sup>14</sup> I.F. Akande, *Local Government Law and Policy in Nigeria: Cases and Materials* (Lagos, Malthouse Press Ltd, 2014) P. 24

<sup>15</sup> See [www.cooperatefinanceinstitute.com](http://www.cooperatefinanceinstitute.com) > Accessed on 16/5/21

<sup>16</sup> See [www.britanica.com](http://www.britanica.com) > Accessed on 16/5/21

<sup>17</sup> Ibid.

<sup>18</sup> United Nations: <https://www.undp.org/sdg-accelerator/background-goals> Accessed on 16th May 2023

<sup>19</sup> See [www.hrsa.gov](http://www.hrsa.gov) > Accessed on 16/5/21

<sup>20</sup> Section 7(1) Constitution of the Federal Republic of Nigeria, 1999.

it shall be the duty of a Local Government Council within the State to participate in economic planning and development of the areas 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.

For its function Section 7 (5), provides that emphatically as follows: ‘The functions to be conferred by Law upon Local Government Council shall include those set out in the Fourth Schedule to this Constitution.

The Fourth schedule to the 1999 Constitution enumerated the following functions to local governments.

1. 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;
- b. Collection of rates, radio and television licenses;
- c. Establishment and maintenance of cemeteries, burial ground and homes for the destitute or infirm;
- d. Licensing of bicycles, trucks (other than mechanically propelled trucks, canoes, wheel barrows and carts;
- e. Establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public convenience;
- f. Construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such facilities as may be prescribed from time to time by the House of Assembly of a State;
- g. Naming of roads and streets and numbering of houses;
- h. Provision and maintenance of public conveniences, sewage and refuse disposal;
- i. Registration of all births, death and marriages;
- j. Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the Houses of Assembly of a State; and
- k. Control and regulation of –
  - i. Out-door advertising and hoarding.
  - ii. Movement and keeping of pets of all description.
  - iii. Shops and kiosks,
  - iv. Restaurants, bakeries and other places for sale of food to the public,
  - v. Laundries, and
  - vi. Licensing, regulation and control of the sale of liquor.

2. The Functions of a Local Government Council shall include participation of such council on the Government of a State in respect of the following matters –

- a. The provision and maintenance of primary, adult and vocational education;
- b. The development of agriculture and natural resources, other than the exploitation of minerals;
- c. The provision and maintenance of health services; and
- d. Such other functions as may be conferred on a Local Government Council by the House of Assembly of the State.

In order to function effectively, the 1999 Constitution provided for finances for Local Governments. Firstly, Section 7 (6) of the 1999 Constitution provides as follows:

“ Subject to the provisions of this Constitution -

- a. The National Assembly shall make provisions for statutory allocation of public revenue to Local Government council in the Federation; and
- b. The House of Assembly of a state shall make provisions for statutory allocation of public revenue to Local Government Councils within the state.

Furthermore, Section 162 (3) (5) (6) of the 1999 Constitution provides as follows:

- (1) Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.
- (2) The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the States for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.

- (3) Each state shall maintain a special account to be called “ State Joint Local Government Account” into which shall be paid all allocation to the Local Government Councils of the state from the Federation Account and from the Government of the State.
- (4) 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.
- (5) The amount standing to the credit of Local Government Councils of a state shall be distributed among the Local Government Councils of that state in such terms and in such manners as may be prescribed by the House of Assembly of the State.

From the foregoing, it can be seen that the Constitution has made elaborate provisions for Local Government finances for it to develop the grass roots. It is in pursuance of these Constitutional provisions that the National Assembly enacted the Allocation of Revenue (Federation Account, etc.) Act which provides in Section 1 thereof as follows:

The amount standing to the credit of the Federation Account (as specified in subsection (1) of Section 162 of the Constitution of the Federal Republic of Nigeria 1999) shall be distributed by the Federal Government among the various governments in Nigeria and the funds concerned on the following basis, that is to say-

- a. The Federal Government 48.5 percent;
  - b. The state Government 24 percent;
  - c. The Local Government Councils 20 percent
  - d. Special Funds 7.5 percent;
  - e. Federal Capital Territory, 1 percent of the Federation Account.
- (a) (ii) Development of the mineral producing areas, 3 percent of the revenue accruing to the Federation Account derived from minerals.
  - (b) (iii) General ecological problems, 2 percent of the Federation account
  - (c) (iv) Derivation, 1 percent of the revenue accruing to the federation account derived from minerals.
  - (d) (v) Stabilization account 0.5 percent of the Federation accounts plus the revenue arising out of using mineral revenue, instead of the Federation Account as the base for allocation of the mineral producing areas and derivation.

Section 4 (1) provides as follows:

‘In addition to the allocation made from the Federation Account under Section 1 of this Act, to Local Government Account (as specified in subsection 5 of Section 162 of the Constitution of the Federal Republic of Nigeria 1999) in each quarter of the Financial year a sum representing 10 percent of the internally generated revenue for that quarter of the state conserved.

(2) The 10 percent of each state’s internally generated revenue payable to the state under the provision of subsection (1) of this Section shall be distributed among the Local Government in state on such terms and in such manner as the state House of Assembly may prescribe.

From the above provisions, the sources of revenue for Local Governments should be derived from the following:

1. From 20% meant for Local Governments from the Federation account.
2. From 10% meant for Local Governments from the state internally generated revenue.
3. From taxes, levies on items on the 4<sup>th</sup> schedule to the Constitution.
4. From other sources such as grants from State/Federal Government and international organizations.

The above finance is enough to fund the much needed development of the rural areas. However, the reverse is the case due to erosion of Local Government funds by the states.

#### **4. Erosion of Local Government Finances**

At the beginning of the 4<sup>th</sup> Republic in 1999 the finances of Local Governments were protected as such finances were disbursed to them in accordance with extant laws. However, the erosion into Local government finances started when Lagos state first created what is called Local Council Development Areas in 2004<sup>21</sup>. These Local Council Development Areas were to be funded from the funds of the Constitutional recognized Local Government Councils. Other states soon followed. Nasarawa State for example also created 18 “ Development Areas. Although tagged Development Areas, it is safe to argue that they are not really meant to develop the rural areas. Rather they are objects of political maneuvering aimed at broadening the political control of the Governor and to siphon local government finances. The states through the instrumentality of the state Joint Local Government Account delved into these funds for other uses other than what is meant i.e the finding of Local Governments. The creation of Development Areas was tested in the case of *AG Lagos state vs. AG of the*

---

<sup>21</sup> See [www.africaresearchinstitute.org](http://www.africaresearchinstitute.org) > Accessed on 17/5/21

*Federation*<sup>22</sup>. The dispute arose out of a circular letter addressed to all the Governors of the states and all the Local Government Chairmen in the country by the Minister of State in the Federal Ministry of Finance. In the said circular the Minister of State informed the Governors and the Chairmen of the withholding of funds meant for Local Government in Lagos State. The main issues for consideration were whether the President has the Constitutional power to control funds from distributable pool account created by virtue of Section 162 (1) of the 1999 Constitution; and whether the new Local Council Development Areas were Constitutional. The Supreme Court *inter alia* held as follows:

1. That the laws enacted by Lagos State that is Law No 5 of 2002 and that of 2004 are both valid laws since the House of Assembly of Lagos state has the power under Section 4 subsection (6) and Section 7 subsection (1) and Section 8 subsection (3) of the Constitution to legislate in respect of the creation of new Local Government Areas and Local Government Councils which were one and the same for the purpose of Section 162 (3) (5) of the Constitution. However, in the context of Section 8 (5) and Section 3 (6), such laws cannot be operative or have full effect until the National Assembly makes the necessary amendment of Section 3 (6) and part 1 of the First Schedule to the Constitution. The effect of this is that the Laws are valid but inchoate until the necessary steps as provided by the Constitution are taken by the National Assembly.
2. It does not appear to be that there is any power conferred on the president to decide to withhold any allocation on the basis of a conceived breach of the Constitution by any of the three tiers. It seems to me also that the allocation principle of funds to Local Government Councils in each state is such that the amount payable does not increase simply because a House of Assembly has created more Local Government areas in the state. To take that into account will simply encourage the proliferation of Local Government areas for the main aim of earning more revenue. That cannot be right or equitable. Section 162 (2) makes it clear that the National Assembly will take into account in the allocation principle especially those of population, equality of states, internal revenue generation, land mass, terrain as well as population density. Since that is the position, the circumstances of the creation of more Local Government Areas by a state ought not to lead to withholding of the normal funds to which a State Government is entitled to receive on behalf of the Local Government Councils in the state. The usual allocation to which a state was entitled before the creation of more Local Government Areas ought not to be a point of dispute. It must continue to receive that allocation on behalf of the local government areas until there is a new general allocation to formulas approved by the National Assembly in its collective wisdom.
3. Failure of the state government to for example open and maintain the state Joint Local Government Account or not to pay a percentage of its money into the said account for use other than for what they are meant would constitute a breach of the relevant provisions of the Constitution. Any such breach would in my view be actionable in a court of law and cannot be enforced by executive sanction unless such is provided for in any Act passed by the National Assembly under Section 162(5) and 162(7) of the Constitution. As it appears the National Assembly is yet to pass any such laws, it will be unconstitutional for the President or any arm of the Executive to assume the role not specifically conferred on him under the Constitution.

From the above decision, it is clear that the States can create additional Local Government or Development Area Councils but will only be inchoate. They can only be operative and entitled to Local Governments funds when the National Assembly makes the necessary consequential provisions with respect to the names and headquarters of the Local Governments. That the Federal Government cannot withhold the funds meant to Local Government to the states who usually receive the said funds on behalf of the Local Government. That where there is a breach by the states on the use of Local Government funds the only thing that can be done is to go to court for redress. That the National Assembly can by an Act provide for how breaches of allocation of local government funds to Local Government can be enforced. It is disheartening to note that since 2004, after the above judgment, the National Assembly did not take advantage of the judgment to enact a law which will provide for direct allocation to Local government of its funds and what is to be done to states which hijack the said funds.

With the affirmation of the validity of Local Council Development Areas by the Supreme Court in *A.G Lagos State vs. A.G of the Federation*<sup>23</sup> the States perfected the further erosion into Local Government funds. They now appoint cronies as Local Government Chairmen who cannot challenge them. They hardly conduct Local Government election but rather appoint their political godsons as members of caretaker committees or Transitional Committees etc. The states continued to erode on local governments funds through what they term

---

<sup>22</sup> (2004) 20 NSCQR 214

<sup>23</sup> *Supra*

First Line Charges which include: Local Government Education Authority gross salary, Local Government Education Authority over heads, Total Education funds payable, Pension Fund Allowances, Training Fund and Traditional rulers. Again, through the state Joint Local Government Accounts, states have come out with all kinds of items which they use to drain Local Government funds. These are Environmental sanitation agencies, AIDS Committee, state Primary Health care etc<sup>24</sup>. With such deduction by the states from the state Joint Local Government Account, there is little left to the Local Governments to develop the grass roots.

### **5. Local Government Finances and Sustainable Development in Rural Areas**

The Local Governments in Nigeria have their sources of revenue. These include:

- a) Federal allocation i.e., each local government is entitled to a share from the 20% meant for all the local governments in Nigeria
- b) 10% of state internally generated revenue<sup>25</sup>
- c) Revenue derived from its itemized subject matters as enshrined in the 4<sup>th</sup> schedule to the Constitution of the Federal Republic of Nigeria.

The objectives of creating Local Government in 1976 include:

- a) To provide democratic and accountable government for local governments.
- b) To ensure the provisions of services to communities in a sustainable manner.
- c) To promote social and economic developments.
- d) To promote a safe and healthy environment.
- e) To encourage the involvement of communities and community organization in the matter of local governments.

According to Brundtland Report, sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs”<sup>26</sup> Sustainable development aims at meeting human development goals. The desired results is a society where living conditions and resources meet human needs. At the local government level therefore what they need are physical infrastructure such as Trunk C Road, Town and village planning, primary health care, primary education, electricity, pipe borne water, building of markets and neighborhood mini market, and facilities etc. In point of fact, it is at the Local Government level that the Sustainable Development Goals of the United Nations will best be realized<sup>27</sup>. If revenue meant for local government are channeled to them, a well intention local government council can meet the needs of the local government and local government participation will increase. It will boost economic participation by local people with the attendant increase in wealth to the local people. However, in Nigeria, what we find is erosion into local government finances. The federal allocation is diverted by the state governments, the 10% statutory allocation from the states are not given to them. They are not even allowed to derive revenue from its constitutionally listed subject matters from where they can generate revenue. It is therefore imperative to protect local government finances from state government in order to have sustainable developments in rural areas.

### **6. Challenges and Prospects of Protecting Local Government Finances**

During the 2017 Constitutional Review, the National Assembly passed a Constitutional amendment bill proposing Local Government autonomy including fiscal autonomy, to be an independent tier of Government. However, the Bill cannot become Law until it goes to all the Houses of the states Assemblies for assent in line with Section 9 (2) of the 1999 Constitution which provides thus:

An Act of the National Assembly for the alteration of this Constitution, not being an Act to which Section 8 of this Constitution applies, shall not be passed on either House of the National Assembly unless the proposal is supported by the votes of not less two-thirds majority of all the members of that House and approved by resolution of the Houses of Assembly of not less than two thirds of all the States.

When the bill went to the states, the Governors made sure that the bill did not meet the Constitutional requirement and so could not see the light of the day. The funds of Local Government could not be protected.

---

<sup>24</sup> M.I. Ugbudu, The Nigerian Financial Intelligence Unit (NFIU) and the Financial Autonomy of Local Governments in Nigeria: Issues and Challenges (Nigerian Journal of Administrative and Political Studies, Vol 5, No 1, Department of Political Science, Benue State University, Makurdi > Accessed 17/5/21

<sup>25</sup> See Section 162 of the 1999 Constitution as amended.

International Institute for Sustainable Development – [www.iisd.org/mccnandgoals](http://www.iisd.org/mccnandgoals)>accessedon- 17/5/21

<sup>27</sup> At the Local Government Level the SDGs that will best be realized include poverty reduction, zero hunger, good health, quality education, gender equality, clean water and sanitation, security and peace and justice.



However, in 2019, the Nigeria Intelligence Unit (NFIU) issued Guidelines to protect Local Government Finances tagged. Guidelines to Reduce vulnerabilities Created by Cash Withdrawals from Local Government Funds throughout Nigeria” which came into effect on 1<sup>st</sup> June 2019. The Guidelines include: -

1. Barring state Governors from interfering with statutory allocation accruing to the Local Government directly from the Federation account.
2. Local Government allocations are to go to their respective bank accounts.
3. The amount standing to the credit of Local Government council of the states shall be distributed among the Local Government Councils of the States and not for other purposes.
4. Provides for a limited cash withdrawal of ₦500, 000 for all 774 Local Government in the country. Any transaction above this should go vide cheques or e-transfer.

The Senate and the National Union of Local Government Employees (NULGE) applauded this gesture, however the Governors vehemently opposed to it. They have questioned the Constitutionality of the NFIU Guidelines on the premise that the NFIU Act 2018 did not give the Unit the power to enact the said Guidelines, that the NFIU acted out of its mandate and that the guideline are an infringement of states Constitutional rights under Section 162 (5) (6) of the Constitution.

### 7. Conclusion and Recommendations

The Local Government system has come to stay having been guaranteed in successive Constitutions. The finances for their operation has also been guaranteed as outlined by Section 162 of the 1999 Constitution, the 4<sup>th</sup> schedule to the Constitution and the Allocation of Finances (Federation Account etc) Act. However, the Governors have exploited loopholes in Section 162 (5) (6) of the Constitution and the case of *AG Lagos v. AG Federation* to deny Local Governments of their constitutionally guaranteed funds. It is indisputable that for the mandate of Local Government to be achieved and for Local Government to remain relevant, conscious effort need to be done to protect local government finances if there should be sustainable development in the rural areas. Hence, conscious effort is required to restore their financial independence, or else the much needed development at the rural areas will be a mirage. Against the above discourse there is need to protect the finances of Local Government in Nigeria. We suggest the following as means of protecting Local Government finances in Nigeria.

- i. Creation of Local Government Constitutional ombudsman to assert the rights of Local Government to fiscal independence and to checkmate the incessant interference by the Governors of Local Government finances.
- ii. Amendment of Section 9 (2) of the 1999 Constitution to provide for simple majority of the States Houses of Assembly in matter concerning Local Governments.
- iii. The President should use his power under Section 315 (1) (2) of the Constitution which gives him the power to modify existing laws. By this, Section 162 (5) and (6) of the Constitution will be modified to give fiscal independence to Local Governments.
- iv. The National Assembly should heed to the Supreme Court advise in *AG Lagos v. AG Federation* to enact a law which will provide for how breaches on Local Government disbursement of its finances will be curbed.
- v. The creation of States and Local Government Economic Boards should be made mandatory by the provision of the Constitution with the mandate of outlining and executing economic development plans to Local Governments<sup>28</sup>. This will naturally attract funds for the said board.

<sup>28</sup> Just as we have the Niger Delta Development Commission (NDDC) which was created to address infrastructural development of the Niger Delta States.