

## AUTONOMY OF LOCAL GOVERNMENT AUTHORITIES IN NIGERIA: A MIRAGE OR A REALITY?

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### Abstract

Federalism is a system of government anchored on devolution of powers between the central government and the federating units with each sphere of governance enjoying autonomy to perform its responsibilities without any interference from other tiers of government. Nigeria as a federal state has powers divided amongst the federal government, state government and local government. The local government is the government closest to the people and is often called the grassroots government. This research examined whether the autonomy of local government in Nigeria is a mirage or reality. In carrying out this research, doctrinal research methodology was employed. Both primary and secondary sources of data were used in the course of the research. Primary sources of data used include the Constitution of the Federal Republic of Nigeria 1999(as amended); relevant statutes and case laws, while the secondary sources of data employed are text books, journal articles and internet materials. The research found that there are several factors militating against local government autonomy in Nigeria which include the constitutional powers of the state government over the existence and affairs of the local government; use of caretaker committee to run the affairs of the local government instead of elected local council, among others. Recently, it took the intervention and interpretation of the Supreme Court to get so many State Governments to commence the process of election of Chairman and Counselors into the Local Governments within their states. When the Local Government elections are concluded, the issues of finances and federal allocations due to the Local Government but mostly erstwhile managed by the State Government would be another issue to contend with. The research therefore answered the question posed about to the effect that local government autonomy in Nigeria is a mirage. The research recommended that the Constitution should be amended to in no unclear terms remove the Local Governments from the apron strings of the state governments and that there should be heavy sanctions on State Governments and persons running the affairs of the Local Government Councils in their states with appointed caretaker committees. This would give room for a clearer legal framework for the independent operation of the Local Government Administration in Nigeria.

**Key words:** Local Government; Autonomy; State Government

### 1.0 Introduction

In modern federalism which is the system of government practiced in Nigeria, powers are divided between the central government and the federating or component unit(s). In Nigeria, the central government is known as the federal government while the component units are the state government and the local government, therefore Nigeria has three tiers of government.

According to K.C. Wheare, a federal system of government presupposes that ‘the general and regional governments are each within a sphere co-ordinate and independent’.<sup>1</sup> Flowing from Wheare’s idea of federalism, a country like Nigeria which practices federalism ought to grant autonomy to each of the three tiers of government to act and make decisions within its sphere of authorities without any interference from the other tiers of government.

In Nigeria, the local government is the third tier of government and it is that level of governance closest to the people and functions to provide the peculiar needs of the people at the grassroots especially the rural areas where federal or state presence might not be readily felt due to distance from the seat of power at the federal or state level. To perform this function, the local government authorities must be given the power to carry out their functions and exercise the necessary discretions available for them under the law.

It is imperative to offer some definitions of local government. The Guideline for Local Government reform 1976 defined local government as:

Government at local level exercised through representative councils established by law to exercise specific powers within defined areas. These powers should give the council substantial control over local affairs as well as the staff and institutional and financial power to initiate and direct the provision of services and to determine and implement projects so as to complement the activities of the state and federal government in their areas, and to ensure, through devolution of functions to these councils and through the active participation of the people and their

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<sup>1</sup>KC Wheare, *Federal Government*, 4<sup>th</sup> ed. (London: Oxford University Press, 1963) 11.

traditional institutions, that local initiative and responses to local head and conditions are maximized.<sup>2</sup>

The key points in the above definition are that an area designated as local government should be defined; a local government should have substantial control over local affairs within the defined areas; it should possess the financial power to carry out the expected functions and should carry out projects which will complement the efforts of other two tiers, that is the federal and state governments.

Local government has been defined as 'the act of decentralizing power, which take the form of deconcentration or devolution'.<sup>3</sup> Emezi on his own part, defined local government as 'a system of local administration under local communities that are organized to maintain law and order, provide some limited range of social amenities, and encourage co-operation and participation of inhabitants towards the improvement of their conditions of living. Local governments provide their communities with formal organizational framework, which enables them to conduct their affairs effectively for the general good'.<sup>4</sup>

The history of local government system in Nigeria dates back to the precolonial era when government existed in communities, villages, clans, families. In the Northern Nigeria there existed a more centralized system of local administration in emirates headed by emirs; the obas headed most communities in the Western Nigeria while the Eastern Nigeria had a more decentralized system of local administration wherein the 'ohaneze' makes decisions.<sup>5</sup> During the colonial era, the British introduced indirect rule or native administration in Nigeria with huge success in the Hausa/Fulani Emirate.<sup>6</sup> The regions, before the grant of political independence to Nigeria, freely organized the local government system that suited them. There was in the Eastern Region the Local Government Ordinance of 1950; the Western Region's Local Government Law of 1952 and the Northern Region's Native Authority Law of 1954.<sup>7</sup> The Local Government system in Nigeria kept on undergoing series of reforms until the current structure of Local Government in Nigeria.

This research addresses the question whether this autonomy supposedly available to each of the three tiers of government is practiced or practicable when it comes to the local government authorities in Nigeria, in other words whether local government autonomy in Nigeria is a mirage or a reality. There has been public outcry for a more independent local government and general debates as to the extent of autonomy that will be enough for the local government to function effectively.

This research looks at the past and the current legal frameworks for local government authorities in Nigeria and also seeks ways to improve the administration at that level of governance which is closest to the people.

## 2.0 Legal Framework for Autonomy of Local Government Authorities in Nigeria

This research briefly discusses the concept of local government autonomy before delving into the discussion of the legal framework. Autonomy in its literal meaning connotes 'freedom', 'independence', 'absence of control by external parties'. Therefore, autonomy of local government authorities can be summarized to mean the independence of local government to run, manage and control its affairs. Autonomy of local government centres around the question of the control, responsibilities and resources conferred on the local authorities, it also includes its powers to exercise discretions.<sup>8</sup> It can also be defined as the ability of local government to exist and execute its roles without any external help or aid.<sup>9</sup> This autonomy also includes freedom in terms of functions and financial management at the grassroots level.<sup>10</sup> Flowing from these definitions, an autonomous local government should be one that operates independent of both the federal and state governments in the management of its affairs; finance;

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<sup>2</sup>S C Agunyai *et al*, 'Local Government Autonomy: A Veritable Tool for Redressing Usurpation of Powers of Local Governments by the State Governments in Nigeria' *Public Policy and Administration Research* 3(10), 23, 2013. <<https://core.ac.uk/reader/234669020>> accessed on 20 August 2024.

<sup>3</sup>R Wraith, *Local Administration in West Africa* (London: Leonage Allen and Unwin) cited in LU Odo, 'The Challenges of Local Government Autonomy in Nigeria' *International Journal of Advanced Studies in Ecology, Development and Sustainability*. 2(1), 101, 2014. <<https://internationalpolicybrief.org>> accessed on 19 August 2024.

<sup>4</sup>C Emezi, 'Local Government in Historical Perspective' *Nigerian Journal of Public Administration and Local Government*. 2(2) 1984.

<sup>5</sup>AA Ahmad, 'Local Government Autonomy and its Effectiveness in Nigeria' *The Journal of African & Asian Local Government Studies* 2015 <<https://researchgate.net/publication/318653002>> accessed on 20 August 2024.

<sup>6</sup>EJ Monday & JH Wijaya, 'The Historical Development of Local Government Administration and Its Contemporary Realities in Nigeria' *The Journalish: Social and Government* 3(1), 2022, 43.

<sup>7</sup>*Ibid*.

<sup>8</sup>KJ Davey, 'Local Autonomy and Independent Revenue' *Journal of Public Administration*, 49, 1991.

<sup>9</sup>C N Okafo & UC Kalu, 'Autonomy of Local Government System in Nigeria: An Aberration or Necessity' *Nnamdi Azikiwe University Journal on International Law and Jurisprudence* 14(2), 35, 2023.

<sup>10</sup>LU Edigin & S Aibieyi, 'Local Government Autonomy in Nigeria: Structural and Institutional Innovations' *Pristine* <<https://globalacademicgroup.com>> accessed 18 August 2024.

recruitment of members of staff and in carrying out its duties without any interference by any external body or government.

In the first republic, under the 1963 Constitution of the Federal Republic of Nigeria, local government administration was entirely regional governments affair, there was no interference by the federal government. Each region determines the desired local government structure it wants to operate and the number of local government councils it desired. That constitution did not make any provisions for Local Government except in section 105(7) of the 1963 Constitution which borders on police affairs and in that section it empowers the Regions to make laws for the creation of local police. Section 105(7) of 1963 Constitution provided: 'nothing in this section shall prevent the legislature of a Region from making provision for the maintenance by any native authority or local government authority established for a province or any part of a province of a police force for employment within that province'.

In 1976 there was a holistic reform of the local government with the aim of having a unified local government system for the entire country. These reforms were largely based on the recommendations of the Public Service Review Commission of 1973 (otherwise known as Udoji Commission).<sup>11</sup> The 1976 Guidelines for Local Government Reforms also provided the legal framework for local government autonomy in Nigeria. Some of the recommendations made in the Guidelines are that:<sup>12</sup>

Government established uniform structures of local government throughout the Federation. The population of each local government area to be between 150,000 and 800,000 persons.  
Traditional authorities were separated from Local Governments and constituted into separate Traditional Councils with advisory functions over Local Council;  
The Ministry of Local Government was established in all states of the Federation to exert control and guidance on Local Government administration;  
Administratively, the management and operational structure of the system was made single tier, with the Secretary as the Chief Executive;  
Local governments were solely responsible for some developmental activities and services, while they performed other functions with the state government;  
A statutory allocation of 10 percent was approved for Local Government Councils from the Federation Account, the Local Government was recognized as the third tier of government.

The creation of a ministry of local government casted doubt on the autonomy of the local government. Part of the provisions of the 1976 Guidelines was that 75 percent of the members of a local government council are to be elected on a non-party basis through secret ballot while the remaining 25 percent are to be nominated by the state government.<sup>13</sup>

Substantial provisions of the 1976 Guidelines were implemented and incorporated in the 1979 Constitution of the Federal Republic of Nigeria which was the first time the Local Government as a third tier of government was constitutionally provided for. That constitution did not, however, expressly conferred autonomy on the local government, rather it handed over the responsibility of ensuring its composition, existence and functions on the states governments.<sup>14</sup>

The military government of Ibrahim Babangida abolished the Ministry of Local Government and in its stead established an executive and legislative arms of government for the local government. The government also guaranteed direct allocation of funds to the local government without the state as intermediaries. Babangida also increased local government allocation from 15 percent to 20 percent.<sup>15</sup>

The extant legal framework of local government in Nigeria is the Constitution of the Federation Republic of Nigeria 1999(as amended). Section 2(2)<sup>16</sup> did not mention Local Government as one of the federating units of the Federal Republic of Nigeria, it provides that 'Nigeria shall be a Federation consisting of States and a Federal Capital Territory'. However, it was stated in section 3(6) of the Constitution that shall be Local Government Areas

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<sup>11</sup>KO Osakede, 'The Place of Local Government in the Nigerian Federal Framework Authority or Servitude' *Journal of Policy and Development Studies* 9(1), 302, 2014.

<sup>12</sup>OH Banko, 'Local Government Autonomy in Nigeria and Politics of State Control: Unveiling the Engima' *ESUT Journal of Social Sciences & Humanities* 5(3) 145, 2020.

<sup>13</sup>Ahmad, n. 5, p. 52.

<sup>14</sup>See, Constitution of the Federal Republic of Nigeria 1979, section 7.

<sup>15</sup>O Igbuzor, 'Local Government Reform and Constitutional Review in Nigeria. <<https://gamji.com/news2676.htm>> accessed 19 August 2024.

<sup>16</sup>Constitution of the Federal Republic of Nigeria 1999(as amended).

and these council areas were listed in Part I and II of the First Schedule to the Constitution. Section 7(1)<sup>17</sup> established the Local Government system in Nigeria. It provides thus:

The system of Local Government by democratically elected Local Government councils 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.

By the express provisions of this section of the Constitution, the state is saddled with the responsibility of ensuring the existence of the local government under a law which provides for the establishment structure, composition, finance and functions of such councils by following the laid down procedures provided in section 8 of the Constitution. Also these local councils must be democratically elected. A state government is expected to make laws conferring functions on the local governments in the state and those functions shall be in addition to the functions already contained in the Fourth Schedule to the Constitution.<sup>18</sup> It is also the duty of a state, through the House of Assembly of the state concerned, to make provisions for statutory allocation of public revenue to local government councils within the state.<sup>19</sup> To buttress its acceptance as a system of government, the interpretation section of the Constitution defined government as 'includes the Government of the Federation, or of any state, or of a local government council or any person who exercises power of authority on its behalf'.<sup>20</sup> On the issue of allocation to local government from the federation account, the monies meant for local governments are to be allocated to the states for the benefit of the local government areas in their respective states.<sup>21</sup> To effectively carry out this purpose, state governments creates a state-local government joint account for their respective states.<sup>22</sup>

The courts have made pronouncements on the status of the local government as an autonomous tier of government within the ambits of the powers guaranteed to it under the Constitution. In the recent case of *AG Federation v AG Abia State*<sup>23</sup> the Supreme Court per Agim JSC made the following pronouncements in relation to the status of local governments in Nigeria:

This Court has in several decisions declared as unconstitutional and illegal any interference by the State Government or the Governor of a State with the independent functioning of the local government councils including the tenure of office of democratically elected local government councils. This Court in *Ajuwon V Gov of Oyo State* (supra) held that "a democratically elected local Government Council does not exist at the pleasure, whims and caprice of either the governor or the House of Assembly. The misconception by the state authorities that the Constitution does not intend to grant and guarantee autonomy to the local government is only a brain wave nurtured by sheer aggrandizement and megalomaniac instinct to conquer and make the local government mere parastatals of the state. That is the very mischief Section 7(1) of the Constitution has set out to address, and it must be so read and construed purposefully. The Constitution and its provisions are to be read and construed broadly and liberally to promote their purpose.

The above pronouncement further buttressed the stand of same Supreme Court on the autonomous status of the Local Government in *Bashorun Ajuwon v Governor of Oyo State & Ors*.<sup>24</sup>

### 3.0 Appraising the Autonomy of the Local Government Councils in Nigeria

The Supreme Court has already decided that the Local Government should be granted the autonomy it deserves as an independent tier of government.<sup>25</sup> Also the Constitution of the Federal Republic of Nigeria 1999(as amended) guaranteed the existence of a democratically elected local government council. It, however, conferred the powers of ensuring their existence on the state governments, a power which most state governments have grossly abused over the years. Problems militating against local government autonomy include the setting up of State and Local Government Joint Account Committee; Local Government Service Commission; Ministry of Local Government and Chieftaincy Affairs.<sup>26</sup> These bodies are all creations of state governments and are equally

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<sup>17</sup>*Ibid.*

<sup>18</sup>*Ibid.*, section 7(5).

<sup>19</sup>*Ibid.*, section 7(6)(b).

<sup>20</sup>*Ibid.*, section 318.

<sup>21</sup>*Ibid.*, section 165(5).

<sup>22</sup>*Ibid.*, section 165(6).

<sup>23</sup>(2024) LPELR-62576(SC).

<sup>24</sup>(2021) LPELR-55339(SC)

<sup>25</sup>*AG Federation v AG Abia State & Ors* (supra).

<sup>26</sup>SC Opara, 'Local Government Service Commission and Challenges of Local Government Autonomy in Nigeria: An Evaluation' *Public Policy and Administration Research* 6(5) 45, 2016.

controlled by the state governments. A state can through these bodies interfere with the autonomy of the local government councils in that state.

The State Independent Electoral Commission which is the body responsible for the conduct of local government elections in any state, is listed as one of the State Executive Bodies.<sup>27</sup> The Chairman and members of this commission are appointed by the Governor of the state concerned, the natural implication is that they may likely dance to the tunes of the state governor in the conduct of the local government elections. It has been alleged that most local government polls are characterized by imposition of candidates by the state governors and other state political actors loyal to the governor, and also by massive rigging.<sup>28</sup>

Through the Local Government Service Commission, a creation of state government, charged with the responsibilities of overseeing the recruitment, conditions of service, discipline, transfer, posting and promotion of Local Government Staff<sup>29</sup> the state wields great influence over the members of staff of the local governments thereby undermining its authority as an independent tier of government.

Lack of democratically elected Local Government Council is also a serious clog in the wheel of progress in the push for local government autonomy. According to a recent report, no fewer than 21 states in Nigeria are without a democratically elected local government council.<sup>30</sup> The use of caretaker committees appointed by the states as against democratically elected council to run the affairs of local governments have been condemned in strong terms by many Nigerians. The National President of the National Union of Local Government Employees, Hakeem Ambali while condemning the use of undemocratically elected appointed by the state governments stated as follows:

Caretaker committees remain illegal. State governments should therefore abide by the rule, especially with total respect to section 7 subsection 1 of the 1999 Constitution. It further reinforces the correctness of the President Bola Tinubu-administration in taking bold step in seeking legal intervention against the violation of the constitution with impunity by state political actors.<sup>31</sup>

Dissolution of local government council is another unwholesome practice by state governments which militates against local government autonomy in Nigeria, the most recent was the dissolution of the elected councils in the 27 local government areas in Jigawa State on 28 June 2024 by the state government.<sup>32</sup> Similarly, in 2021, Oyo State Government dissolved a democratically elected council acting under sections 11 and 21 Oyo State Local Government Law 2001 and appointed in their place, unelected caretaker committees. The dissolution of local government council was challenged up to the Supreme Court and the Court per Ejembi Eko JSC made the following pronouncements:<sup>33</sup>

It should be reiterated as Abdullahi, PCA and Ndukwe-Anyanwu, JCA did say, respectively in *Abubakar v. A. G., Federation* (2007) 3 NWLR (pt. 1022) 601 (CA) at 619 and *A. G. Benue State v. Umar* (CA) (*supra*) at 363, that an elected person is not an employee of anybody except the electorate that voted him in. It is only the electorate that can fire him. Democratic elections should always be sacrosanct in this Country, like in any other Country, for democracy to thrive. Local Government Chairman and Councillors, being persons duly elected by the people cannot just be removed and their councils dissolved whimsically and arbitrarily by any other elected persons in clear abuse of their office and powers. It is not right in law and under the Constitution to do that.

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<sup>27</sup>Constitution of the Federal Republic of Nigeria 1999(as amended), section 197(1)(b) and Part II (3 &4) of the Third Schedule to the Constitution.

<sup>28</sup>MO Adeyeye, 'Governing the Localities: Lessons (UN) learnt, 284 Series Inaugural Lecture' An Inaugural Lecture delivered at Oduduwa Hall, Obafemi Awolowo University Ile Ife, on 22 March 2016 cited in EJ Monday & JH Wijaya, 'The Historical Development of Local Government Administration and Its Contemporary Realities in Nigeria' *The Journalish: Social & Government* 3(1), 2022, 43. <<https://thejournalish.com/ojs/index.php/thejournalish/index>> accessed 20 August 2024.

<sup>29</sup>Opara, n. 26.

<sup>30</sup>C Akasike & D Tolu-Kolawole, '21 States run Local Government Areas with Caretaker Committees' *Punch Newspaper* 30 June 2024. <<https://punchng.com/21-states-run-local-government-areas-with-caretakers-committees/>> accessed 26 August 2024.

<sup>31</sup>*Ibid.*

<sup>32</sup>AA Maishanu, 'Jigawa Dissolves Elected Local Govt Councils' *Premium Times* 28 June 2024. <<https://premiumtimesng.com/regional/nwest/707871-just-in-jigawa-dissolves-elected-local-govt-councils.html>> accessed 26 August 2024.

<sup>33</sup>*Ajuwon & Ors v Gov of Oyo State & Ors* (2021) LPELR-55339(SC).

Early in 2016, when faced with an appeal bordering on dissolution of local government council in Ekiti State, the Supreme Court in *Gov Ekiti State & Ors v Olubunmo & Ors*<sup>34</sup> stated that 'it is a trite principle of law that a governor cannot remove or truncate the tenure of democratically elected individuals of the local government council'. In that case, the Supreme Court declared the Ekiti State Local Government Administration (Amendment) Law 2001 which empowered the Governor to dissolve a democratically-elected Local Government Council to be inconsistent with section 7(1) of the Constitution of the Federal Republic of Nigeria 1999 and hence null and void. In the case of *AG Federation v AG Abia State* (supra) dissolution of elected local government councils equally received similar condemnation from the country's apex court. It is hoped that this most recent judgement of the Supreme Court will finally put to an end the illegal dissolution of the local government council by state governments.

#### **4.0 Conclusion**

The Local Government is the government closest to the people especially the people in rural areas who might not easily have access to the center of power at a state capital. It is therefore known as the grassroots government meant to carry out functions conferred on it in the Constitution as contained in the Fourth Schedule and also functions which may be conferred on it by the State House of Assembly. There have been several factors that put question marks on the autonomy of the local government authorities in Nigeria. First among them is the legal framework of the local government which puts that tier of government in the hands of state governments, a state of affair which has been grossly abused by the state governments. Use of caretaker committees; several bodies instituted by the state to control the affairs of the local government especially the State Independent Electoral Commission; dissolution of democratically-elected local government councils by some state governments; the constitutionally provided state-controlled local government joint accounts which makes the local government councils financially dependent on state governments, these are factors that have made local government autonomy in Nigeria presently a mirage instead of a reality. There is therefore need for more reforms in the third tier of government before local government autonomy can become a reality.

#### **5.0 Recommendations**

To this end, this research recommends that section 7 of the Constitution of the Federal Republic of Nigeria should be amended to remove the responsibility of ensuring the establishment, structure, composition, finance and functions of local government councils from the state government and a detailed provisions establishing and composing independent local councils; detailed provisions as to the functions and tenures of elected local council chairmen and councilors should be expressly provided in the Constitution. The State Independent Electoral Commission should cease to be one of the State Executive Bodies and the powers to appoint its chairman and members should be removed from the state government and done by an independent body. There should be huge, punitive sanctions on any State Government that dissolves a democratically-elected local council or that appoints caretaker committee to man the affairs of local government councils instead of calling for election. Such sanctions should include but should not be limited to the seizure or withholding of the monthly state allocation from the Federal Government on the advice of the INEC. The State Commissioner for Finance and the Accountant General of the offending state should be held criminally liable and be made to pay fines for each day of such default. There should be an organized timetable for periodic elections to local government councils in each state. This timetable should be coordinated and monitored by the Independent National Electoral Commission (INEC).

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<sup>34</sup>(2016) LPELR-48040(SC).