



## **Local Government Autonomy In Nigeria And The Legal Implications**

**Michael Obiora Ifeanyi Nwabuoku Ph.D<sup>1\*</sup>**

**Jenigho Phillip Esavwede Ph.D<sup>2</sup>**

<sup>1\*</sup>Senior Lecturer, Delta State University, Abraka, Nigeria, Faculty Of Law (Oleh Campus), Dept Of Commercial and Property Law. Email: buokuobiora2020@gmail.com

<sup>2</sup>Senior Lecturer, Delta State University, Abraka, Nigeria, Faculty Of Law (Oleh Campus), Dept Of Public Law. Email: jpesavwede@gmail.com

**\*Corresponding Author:-** Michael Obiora Ifeanyi Nwabuoku Ph.D

\*Senior Lecturer, Delta State University, Abraka, Nigeria, Faculty Of Law (Oleh Campus), Dept Of Commercial and Property Law. Email: buokuobiora2020@gmail.com

### **Abstract**

The local government is designated as a third-tier government in section 7 of the 1999 Constitution, but regrettably, the state government has been granted authority over its makeup, creation, structure, finances, and even control. The state government create the numerous local government legislation that control the local governments through their Houses of Assembly. In addition, the state chooses her tenure and, to some extent, the amount of appropriations from the Federation account that are sent to them through the State Joint Local Government Account. Because of this, the local government effectively becomes a branch of the state government. Many people think that in order for local governments to operate efficiently and effectively, they must have both functional and budgetary autonomy. Others contend that local governments only require a minimal amount of checks and controls as things are and that ultimate autonomy does not exist anywhere in the globe. Most of the time, the Federal, States, and their Assemblies dominate local government through their supervisory roles and the holding of the release of their funds. Numerous governments and well-intentioned Nigerians have persisted in calling for the autonomy of local governments. The National Assembly recently adopted the same, and the 2014 Constitutional Conference mentioned it in several of its proposals that were never implemented. The National Assembly's attempt to change the constitution to grant local governments the aforementioned necessary autonomy is currently being examined and supported by the states. It is expected that this autonomy will one day come to light amid control and struggle.

**Key-words:** Local government, autonomy, legal implications, states, Nigeria.

### **1. Introduction**

Local governments are covered under section 7 of the 1999 Constitution, which states that every state must ensure their existence under a legislation that specifies the creation, organization, composition, finances, and activities of such Councils. This section is subject to section 8 of the Constitution. New local governments may be created under section 8. The foundation of this paper is comprised of these components. The aforementioned sections provide significant authority over local governance on the States and their Houses of Assembly. The various controls make the issue of local government autonomy, which is clamoured for questionable; all these are being espoused and analyzed in this paper, with the question of whether the current situation of the establishment, composition, structure, functions, and funding of local governments are adequate; also, whether a constitutional amendment to give the local government a new lease of life would suffice; and any efforts being made to actualize same.

## 2. Definition of Terms

Appadorai<sup>1</sup> defined local government as a government made up of popularly elected entities tasked with carrying out administrative and executive functions for the benefit of the local populace.

According to Awa<sup>2</sup>, local government is a form of delegated authority established by a country or state, reporting to a central authority.

It is described by Ogunma<sup>3</sup> as a political authority that was specifically established by legislation for local communities to use in managing their local issues within the parameters of the law or constitution.

Autonomy is the right to exercise one's own government, such as in a self-governing state<sup>4</sup>.

Autonomy also means freedom of all kinds, like:

- a. freedom to do what one thinks best.
- b. Freedom to act without restraint
- c. Freedom without being afraid of anything
- d. Freedom to receive full right of self government<sup>5</sup>.

## 3. Areas of Autonomy

Guaranty of Separate Existence:

The local government councils' independent existence as a separate tier of government is guaranteed by section 7 (1)<sup>6</sup> of the 1999 Constitution. In this regard, the text of the constitution is unambiguous. The following constitutional declarations support this:

a. Sections 7(1) and 8 are referenced. There are numerous provisions concerning local government's organization, composition, finances, and functions in the Constitution, which is the sole document that mentions it.

b. The State Houses of Assembly are required under section 7(6)(b) to include a statutory provision for the distribution of public funds to local governments.

c. This served as the foundation for the Supreme Court's ruling in the case of *Attorney General, Abia State v. Attorney General Federation*<sup>7</sup>, which determined that the National Assembly lacked the authority to enact laws governing elections for the positions of Chairmen, Vice Chairmen, and Councillors of the local government, with the exception of those pertaining to voter registration and the procedure governing elections to a local government council. The court further held that the National Assembly lacked the authority to pass any laws or rule on a candidate's eligibility for elections that were to take place in accordance with the provisions of the 1999 Constitution without first abiding by the rules of section 9, which governs constitutional amendments.

## 4. Local Government Character

The fundamental Objectives and Directive Principles of State Policy, which are found<sup>8</sup> in Chapter II of the 1999 Constitution and are not justiciable by virtue of section 6(6) of the Constitution. Section 14(4) of the same Constitution also instructs each Local Government to adhere to what might be referred to as local government character.

---

<sup>1</sup> Appadorai, A: *The Substance of Politics* (New Delhi Oxford Universities Press (1975) 30.

<sup>2</sup> Awa, E *Issues in Federalism* (Benin City Ethiope Publishing Corporation, (1976) 65.

<sup>3</sup> Orewa, GO *Reflections on Local Government Development in Nigeria*, (Badagry ASSCON Press, (1991) 36.

<sup>4</sup> Garner, BA *Blacks Law Dictionary Seventh Edition*, Edited by West Group, St. Paul, Minn 1999 at 130.

<sup>5</sup> Oyewo AA *Local Government Autonomy – Theoretical and Conceptual Frame Work, Socio – Legal Essays in Local Government Administration in Nigeria*, Edited by John Ademola Yakubu, Demyaxs Law Books, 2008 at 54.

<sup>6</sup> 1999 Constitution (as amended)

<sup>7</sup> (2002) 3 SCNJ, 158.

<sup>8</sup> Esavwede JP, Mukoro, MA (2019) *The Concept of Sustainable Development (SD) and Its Application to Oil Exploration in Nigeria*. *International Journal of Comparative Law and Legal Philosophy* (IJOCLLEP) Vol 1 no 1 at 191.

## 5. The Functions of a Local Government Council

Therefore, it is proposed that the Constitution should go all out and grant the local government councils a full and robust autonomy because, as is currently the case, the structure only offers a partial solution. Infact, it is as Senior puts it "modified only by capricious selection of minor improvements and major impairment"<sup>9</sup> A true and robust autonomy for the local government is what grassroots democracy wants, according to Yakubu.<sup>10</sup>

## 6. Constitutional Limitations on Local Government Autonomy

It will be pertinent to note the provisions that limit the aforementioned autonomy before engaging in a detailed examination of local government autonomy, which are as follows:

- a. According to section 7 (1) of the 1999 Constitution, the State governments define the formation, organization, makeup, funding, and duties of local governments.
- b. Section 8(4) of the aforementioned Constitution allows the State legislature to alter local government boundaries.
- c. By means of section 8, the State legislature can establish new local governments.
- d. The 1999 Constitution's section 162 gives the Federal and State governments jurisdiction over federal appropriation and disbursement to local governments.
- e. Section 6 of the Constitution establishes Customary Courts for the purpose of enforcing byelaws passed by local governments.
- f. Through paragraph 24(6) of the third schedule of the Constitution, the National Population Commission, a federal executive entity, violates the rights of local governments with regard to the registration of births and deaths.
- g. The Revenue Mobilization Allocation and Fiscal Commission sets the salaries of political office holders across the federation, including local governments, without regard to whether any particular local government is in a position to shoulder financial burdens as required by the Constitution's paragraph 32(d), part 1, schedule 3.
- h. As stated in paragraph 4 part ii, schedule 3 of the constitution, the State Independent Electoral Commission (a state agency) is responsible for conducting local government elections without the involvement of the local government.<sup>11</sup>

## 7. An Examination of Local Government Autonomy

The primary question in the autonomy discussion is what authority and responsibilities the federal, state, and local governments should delegate to local political entities. The 1976 Local Government Reforms made an attempt to define local government and her autonomy, highlighting her essential components.

The local government should, first and foremost, have clear authority and responsibilities.

Second, the local governments must function independently of all other governments, which means they cannot be satellite offices or extensions of the State or Federal government. Third, they must be able to create their own laws, rules, and regulations. Fourth, they must be able to create and implement their own staff policies.

The 1976 Local Government Reform made sure that local initiative and responses to regional needs and conditions were prioritized. Local government is defined as: a government established by law to exercise certain powers and control within designated boundaries.

Sadly, the 1999 Constitution made matters worse by granting wide latitude to impede the local system by denying it the freedom to function.

While examining the justifications for denying local governments complete autonomy, Okoli<sup>12</sup> notes that only a truly independent and autonomous local government is consistent with the

---

<sup>9</sup> Senior D quoted in Barber M.P in "Local Government" 3<sup>rd</sup> ed., M & E Handbook, Macdonald and Evans 25.

<sup>10</sup> Yakubu, JA Socio-Legal Essays in Local Government Administration in Nigeria, Demyaxs Law Books Nig. Ltd, Ibadan (2003) 9.

<sup>11</sup> *Ibid.* 143 – 144.

<sup>12</sup> Okoli, MU Local Government Administration System; An Introductory and Comparative Approach (Abort Books Ltd, Onitsha 2005) 14.

principles of democracy. However, others contend that the restrictions<sup>13</sup> placed on local governments are not undemocratic.

Their actions show that autonomy is gradually being downplayed in contrast to Britain, where it was founded for governments to have the authority to observe it rather than manage it.

The political imperatives of federalism propose delegating specific tasks to a particular level of government in most federal systems, which implies that these tasks should be carried out without regard to any other level of government from a legal standpoint.

There are three separate tiers of government in Nigeria's strong federalism: federal, state, and local. Each of these has distinct roles and duties. The Residual Legislative List is under the control of the State governments, while the Concurrent Legislative List is shared by both, with some subjects falling under the exclusive jurisdiction of the Federal government, such as Exclusive Legislative Lists. Following that, the 1999 Constitution states the duties that Local Councils are expected to carry out. Others must be carried out in collaboration with the State government or other State agencies, while some of these duties are only performed by Local government councils. Both federal and state laws will take precedence in situations where there is a disagreement between them, as well as when there are ramifications between federal and municipal laws. This implies, in a way, that the constitutional division of powers among the tiers of government, which provides some measure of security for the "lower level," may be abused by the "upper level" through a variety of strategies.

Scholars disagree on whether local governments should even exist or if all national concerns should be managed by a single central administrative body. Four reasons are typically given for the development of local government: to advance local freedom, to provide local services, to foster national unity through effective administration, and to advance grassroots democracy<sup>14</sup>. Britain's defining characteristics are prolonged "ambiguities and confusion," not necessarily financial dependency of Local Authorities on the Central Government. Actually, according to Mukhopadhyay,<sup>15</sup> intergovernmental relations in Britain are defined by partnership rather than control, but this partnership entails an unclear division of labour among the many tiers of government. While this may be the case in Britain, where the constitutional political framework is essentially flexible and is left to convention and understanding, there is a clear constitutional basis<sup>16</sup> for local freedom in Nigeria, despite the country's significant financial dependency on the federal government.

The degree of local freedom or autonomy varies from one nation to the next, but in every case, it is becoming clearer that local government is neither supra-sovereign nor a sovereign national organization. Furthermore, contrary to what Humes said, it is not quasi-sovereign but rather an infra-sovereign entity<sup>17</sup>. This seems apposite. According to Aghayere,<sup>18</sup> there are two types of autonomy in Nigeria: functional autonomy and autonomy in terms of finances and labour. The functional autonomy was further divided into general, exclusive, and concurrent functions by the author. According to his theory, excessive intervention from the state and federal governments harms local government performance. We believe that because local government is Nigeria's third branch of government, it should have unrestricted flexibility to carry out its constitutional duties. This has not been the case in practice because it was noted in the aforementioned manual that local governments' autonomy is not total<sup>19</sup>. Thus, autonomy is implied to be merely

---

<sup>13</sup> Ogisi UM, Omozue, OM (2022) Insecurity in ECOWAS: An Impediment to the Realization of Regional Integration. *Commonwealth Law Review Journal* vol 8 at 294.

<sup>14</sup> Bello-Imam IB *Local Government in Nigeria; Evolving a third Tier of Government* (Heinemann Educational Books (Nig) Plc, Ibadan 2004) 111.

<sup>15</sup> Mukhopadhyay A *Central Local Relations: A Framework of Analysis: NAGAROLK*, Vol. xiv, No. 4, Oct- Dec, 1982, 98 – 108.

<sup>16</sup> Ogisi,UM, Okumagba, EO (2021) *International Law and Municipal Law: Towards a Unifying Framework of Applicability* *International Review of Jurisprudence and Law (IRLJ)* Vol 3 Issue 1 at 90.

<sup>17</sup> Humes S, Martin EM. *The structure of Local Government throughout the World*. I. U. W. A, (The Hague, Netherlands, 1961) 1.

<sup>18</sup> Aghayere,VO *Dominant Issues in the Nigerian Local Government System; A Contemporary Focus* (Imprint Service, Lagos, 1997) 126.

<sup>19</sup> *Federal Republic of Nigeria, Handbook on Local Government Administration*, the Presidency 1992 at 10.

symbolic. According to the same text, State governments must create a statute outlining the makeup, functions, and finances of local governments in their respective States. This law must also give States the authority to create the office of State Auditor-General for local government. The requirement that the Chairmen of Local Government exercise their authority without impeding or prejudicing the Executive, a Federation, or a State in which the Local Government Area in question is located, or endangering the assets of the government of the Federations, the State, or the local populace, further undermines this autonomy. The State and Federal governments have made it clear that they do not want to provide the local government the necessary<sup>20</sup> authority to function effectively as Nigeria's third tier of government.

Additionally, local government expenditures are governed by State Financial Instructions, notably those that deal with the regulation of expenditure contracts, purchases, payments, and even spending caps. The auditing industry is also losing local autonomy. The law permits the States to create the position of Auditor-General for Local Government, who has the authority to conduct routine audits of local government accounts as well as to discipline and penalize any officer. Local governments may ask outside auditors to review their books in a perfect world where complete autonomy is provided.

The control of local governments over human resources is another area that is being compromised. The State has the authority to dissolve local government councils at any time and to name Caretaker Committees or Sole Administrators to lead the councils in the interim. In other contemporary societies, this is strange. The main responsibility of the Local Government Service Commission is to maintain the management capacity of local governments. One of the State government's branches or statutory agencies is this commission.

Local autonomy was not a feature of the 1976 Local Government Reform. The local government was only depicted as a distinct branch of government with legal standing, legal authority, and financial stability. This was true despite the fact that it remained somewhat within the State government's purview to secure the formation of local government councils and to provide for their composition, structure, finances, and functions<sup>21</sup>.

The 1979 Constitution, by which local governments in Nigeria ceased to be the sole purview of state governments, provides information about their other status. Despite this, the network of relationships between the various levels of government, as established or as they have developed, has had a significant impact on local autonomy. It goes without saying that State governments opposed measures that would have meaningfully and substantially transferred authority to the local government level. As a result, from the time they were established, the various state governments issued Edicts in 1976 that made it abundantly clear that local government functioned and even existed almost entirely at the whim of the State governments<sup>22</sup>. States even went so far as to examine and analyze the records of meetings, accounts, and local government. All of these actions were taken in the context of a misinterpretation of section 7 of the 1999 Constitution by the State, which led it to believe that state governments still had control over local government. This development is reflected in the unusual manner in which state governments appointed Caretaker Committees. Therefore, it appears from the information above that achieving autonomy is still challenging.

It is a fact that at the 2014 Constitutional Conference in Abuja, many people argued in favour of keeping local governments in place rather than having them scrapped as others had recommended.

It is hoped that the Constitutional Conference Recommendation should not only give stamp to the continuation of local administration in Nigeria but should give it enabling powers to strengthen its autonomy. Unfortunately, there is no white paper on the recommendations of the conference.

---

<sup>20</sup> Nwabuoku. MOI, Gasiokwu, PI (2022) The Concepts of Justice and Equity and their Efficacy in the Administration of Justice in Nigeria Journal of Legal, Ethical and Regulatory Issues (JLERI) Vol 25 Issue 5 at 6.

<sup>21</sup> Akande JO Introduction of the Nigerian Constitution, London Sweet and Maxwell, 1988, 3.

<sup>22</sup> Koehn P 'State -Local Relations in Nigeria'; Paper Presented at the International Political Scheme Ass. Regional Conference in New Delhi, 15 - 20 March 1988 at 3.

The Ojo Local Government/Lagos was established by statute and section 7 of the Constitution, and the court held in *Yisa v. Ojo Local Government*<sup>23</sup> on status and functions of local government that it is a multifunctional authority with duties ranging from the creation of economic plans and development schemes for its area of coverage.<sup>24</sup> When referring to the local government in *Nebo v. Okwelum*<sup>25</sup>, the term "regulation" refers to the act or process of regulating by rule or restriction. Its application under the 1999 Constitution refers to the duties and procedures of the Council and is not limiting but a method of action control. That is an indicator of autonomy because the Constitution is the "*fon et origo*" and the standard by which all other laws are judged<sup>26</sup>.

It's interesting to note that in *Akpan v. Umah*<sup>27</sup>, it was determined that section 7 (1) of the 1999 Constitution guarantees the system of local government by democratically elected councils. As a result, every state must, subject to section 8 of the Constitution, ensure that their existence under a law that specifies the establishment, structure, composition, finance, and functions of their councils<sup>28</sup>.

However, there is ample evidence that some Houses of Assembly in their States significantly interfere with the autonomy of local governments, as is seen in a wide range of instances. They frequently evade detection by disguising themselves under legislative monitoring duties. Due to this, the Legislature and Local government, as well as the other way around, have been involved in several court cases in various States.

Local government autonomy has taken a serious hit as a result of sections 162 (5) and 162 (6) of the 1999 Constitution, which both deal with State Joint Local Government Account. Out of the 99 (ninety-nine) Senators who were eligible to vote in the 6th Republic's National Assembly, 59 favoured giving local governments more autonomy, while 38 voted to keep the current law in place. Two hundred and ninety-three (293) lawmakers supported it in the House of Representatives, while thirty-nine (39) opposed it. Similar to this, the majority of the 7th Republic National Assembly voted in favour of local government autonomy..

In an article by Akoni: '*APC Clarifies Position on Local Government Autonomy*<sup>29</sup>'. The APC Political Party emphasized that although the APC Governors were not opposed to local government autonomy, the State Houses of Assembly should decide this instead of the National Assembly.

In an article, titled '*Good Local Governance: still a mirage in Nigeria*' by Asagba<sup>30</sup>, he supported autonomy for local government councils. Eboh<sup>31</sup> highlighted this in another post titled "States Threaten Local Government Existence Says "ALGON.". Nwabueze, national president of the Association of Local Government of Nigeria (ALGON), notes that the State governments routinely violate the constitutional provisions supporting the local government, which makes it challenging for the local governments to carry out their developmental duties like collecting tenement rates and advertisement charges rates. He adds that the States have taken over the local governments' responsibilities that have revenue incentives. Therefore, he advocated for the establishment of autonomy in the Nigerian Constitutional amendment and criticized some State governments' ongoing and unjustified removal of council officials. Additionally, he demanded that certain provisions of the Constitution be reviewed since they interfere with the management of local government, such as the one that supports joint accounts for the state and local governments<sup>32</sup>.

---

<sup>23</sup> (2004) FWLR (Pt. 194) 439, 455, Par. A-C, Ratio 6.

<sup>24</sup> Sections 36 and 37, Local Government (Administration) law, S. 36 & 37 and S. 8 (As Amended) and the fourth schedule of the 1999 Constitution.

<sup>25</sup> (2009) ALL FWLR, (Pt. 484) 1508, 1525, pars G- H, R. 3.

<sup>26</sup> *Abacha v. Federal Republic of Nigeria* (2006) 4 NWLR (Pt. 970) 239.

<sup>27</sup> (2007) FWLR, (Pt. 110), P. 1820, 837-1838, Ratios 3 & 4.

<sup>28</sup> A Combined Reading of Section 4 (6), 4 (7) (b) and (c) and Section 7 (1) of the 1999 Constitution provide for this, also, the case of *Akon v. A.G. Cross River State* (1982) 2 FNLR 177.

<sup>29</sup> Akoni O Vanguard Newspapers, Friday, August 16, 2013 at 10.

<sup>30</sup> Asagba M Vanguard Newspapers, Friday, August 16, 2013 at 24.

<sup>31</sup> Eboh M Vanguard Newspapers, Thursday, August 15, 2013 at 8.

<sup>32</sup> Section 162 (6) of the 1999 Constitution (amended)

It should be noted that the State governments are not intended to be the State Joint Local Government account's beneficiaries, but rather its trustees, whose responsibility it is to see that the funds are distributed fairly among the councils while strictly adhering to the constitutionally mandated standards. Sadly, many State governments are abusing this statute in ways that are not intended. When committees are formed to manage the fund, they occasionally have to deal with a clear majority from the States and a negligible amount from the local councils.

It is interesting to note that even while the Dasuki Reform Committee Report<sup>33</sup> confirmed the local governments' autonomy, which is considered to be functional, and said that the main issue with the local government system was not structural or operational but rather human, there were still issues. Although the Babangida administration organized non partisan local government elections, abolished the Ministry of Local Government, and increased statutory funding to 20 percent in 1992, all of these measures were intended to increase autonomy, the situation was akin to old wine in a new bottle because the department that replaced the Ministry of Local Government continued to operate in a nearly identical way.

Another source of crisis for the system that requires complete autonomy is the Federal government's usurpation of the management of primary education, which was previously the responsibility of local government, and its use as a justification for arbitrary deductions from the local government's statutory allocations for teachers' salaries.

Another inconsistency is the fact that the 1999 Constitution gave State Governors the authority to oust Council Chairmen or dissolve the entire Council, in spite of the fact that the same Constitution previously provided for a legislative process. They should have power over the share owed to them in section 162, but that same constitution didn't make that explicit. Due to the ambiguity or lack of such explicit explanations, the State governments have the freedom to adopt any interpretation they see fit in order to seize control of the local government's portion of the money and determine what to do with it. This abridges the local governments' financial independence<sup>34</sup>.

Mbuba<sup>35</sup> comments on autonomy and points out that from pre-colonial times, the topic of autonomy has been a source of debate. He notes that as a result, the local governments in Nigeria have continued to act as a political pawn, and as a result, succeeding administrations in Nigeria have played with the trust of the populace at the local level by manipulating its structure, regulations, and operations.

The 1999 Constitution<sup>36</sup> paved the way for this autonomy in Nigeria by stating that section 7 (8) (a) is subject to section 7 (7) and that the National Assembly shall establish measures for statutory allocations of public funds to the local governments in the Federation. According to Mbuba, this provision gave Nigerians hope that the local governments would be able to recover from the long-term financial strangulation that both the Federal and State governments had imposed on them. However, the feeling of hope<sup>37</sup> was fleeting because the 1999 Constitution brought the councils under the control of the State governments, worsening the situation with regard to local governments' autonomy. The local governments are in a desperate state as a result of this unwholesome scenario, making it challenging to provide basic services to the populace.

A one time chairman of Nigeria Governors forum in the 6<sup>th</sup> Republic Mr. Chibuike Amaechi<sup>38</sup> was reported of saying that the local government should be completely removed from the Constitution<sup>39</sup>. Given that he was speaking in a representative capacity, this statement is really powerful. According to Bownman and Kearney, understanding what autonomy means in this context requires looking at the definition of local government,<sup>40</sup> which they define as the level

---

<sup>33</sup> 1984 – 1989.

<sup>34</sup> Fagge TA The Future Of Local Governments Institution In Democratic Governance In Nigeria. (Tahir And Family Holdings Ltd, Kano, 2005 at 163.

<sup>35</sup> Mbuba FN, Local Government Autonomy And the Nigeria Legal System: An Appraisal Journal of Social Sciences and Public Policy, Vol. 6, No 1, 2014 at 1.

<sup>36</sup> Section 7 (8). Of the 1999 Constitution (as amended).

<sup>37</sup> Mbuba *Op.cit* 15.

<sup>38</sup> Former River State Governor and Chairman of a Faction of Governors' Forum.

<sup>39</sup> A suggestion made to the National Assembly Committee on Constitutional Amendment.

<sup>40</sup> Bownman A, Kearney RC (2002) State, Local Government, New York Houston Mifflin Co., Daily Sun Newspaper, (2012) July 11 at 6.

of government responsible for fighting crime, putting out fires, maintaining parks, providing water, and educating children. This portrays autonomy without considering the degree. According to Kavitin, the purpose of local government is to enact democracy at the grassroots level and to be charged with carrying out tasks and obligations in the area of rural development<sup>41</sup>.

It is hard to determine how much autonomy a local government needs to be able to carry out its duties effectively based on the definitions of local governments provided above. According to Mbuba,<sup>42</sup> it appears virtually compelling that the criteria provided above do not permit them to have full autonomy. Mbuba adds that the Nigerian Legal System and its autonomy are best understood in terms of (a) customs, (b) local government ordinances, (c) general codes governing all localities, (d) constitutional provisions (general legislation or statutes), and (e) case laws that are applicable<sup>43</sup>.

The goal of this endeavour is to connect these laws and rules to the autonomy system in relation to the present call for her complete autonomy.

## 8. Local Government Autonomy and Nigerian History

**(a) Pre-colonial era:** The existing customs and traditions of the individual tribes served as the basis for the local government systems in Igbo land, Yoruba land, and the Kanuri Empire during the pre-colonial era. The system in Igbo land was built on independent village democracies. In this context, autonomy refers to the power of the family and other kin units to decide on matters that affected them independently of outside influence.

The Oba oversaw the system in Yoruba territory during the pre-colonial era through the chiefs and other authorities. But in a lot of other matters involving the people, the Oba had the final decision. Since the Oba was independent of any authority above him and his subjects were frequently required to follow his orders, the autonomy question was pertinent in this situation. While the Oba might be regarded to have autonomy in this situation, the populace was forced to follow the Oba's orders.

The situation in Hausa land was not all that dissimilar from that in Yoruba land. This was due to the fact that the Hausa had a figurehead who could be compared to a monarch who, through other subordinate Officers, made decisions regarding the subjects who followed orders. According to Hausa customs and traditions, the Village Head, who had direct contact with the populace, was the lowest authority.

**(b) Colonial Period:** When Lord Lugard was appointed Governor-General of Northern Nigeria in 1900, the "Isi" land system of government had already taken hold in Hausa Land and other sizable regions of Northern Nigeria. This administrative structure met his demands, so he adopted it and gave it the name Indirect Rule System. Through the Emirs, who were strong Muslim Chiefs, he governed the populace under this system. According to this, the Emirs' government was referred to as Native Administration and their authorities as Native Authorities. The Residents, English officials appointed by Lugard to supervise the operations of the former, limited the power of the Emirs.

It is obvious that the local governments were not given broad autonomy by the Native Authority Ordinance of 1914. Due to its provisions, the Colonial government now has overall jurisdiction over local government activities.

**(c) Post Independence Period:** At the time of independence in 1960, each of the three Regions (and eventually the four Regions by 1963) ran a unique form of local government administration. However, once the military took over in 1966, the country was unified in most areas of governance, including the management of local governments.

The Murtala/Obasanjo administration's reforms from 1976 completed Nigeria's local government administration's unification. The system was to be uniform and democratic, according to the "Reform Guidelines." The local governance in Nigeria was made "the third tier" of government under the "Guidelines," which increased the councils' autonomy to the next level.

The rules outlined in the "Guidelines" enable local governments to assume several significant responsibilities that are listed in the primary and secondary lists, respectively. The autonomy

<sup>41</sup> Laxim Kavitin, M (2005), Public Administration, New Delhi Tata Mc Graw Hill Publishing Co. Ltd 70.

<sup>42</sup> Mbuba *Op.cit* 20.

<sup>43</sup> <[www.cenresinpub.org](http://www.cenresinpub.org)> accessed 10 February, 2022.



was total for the items in the primary list, but it was not possible for them to carry out duties on the secondary list without the consent of the State or Central governments.

The 1976 Reforms' provisions were confirmed by the 1979 Constitution by enshrining them in sections 7 and schedule 4. Her autonomy of the local governments was allowed for in the primary and secondary legislative list pursuant to section 7 of the 1979 Constitution.

In addition to repeating the aforementioned clauses in section 7(7) of the 1979 Constitution, section 7(8)(a) of the 1989 Constitution stipulated that, subject to the clauses, the National Assembly shall make provisions for the statutory allocation of public revenue to Local Governments in the Federation. These clauses had the effect of granting Local Governments, as well as the Federal and State Governments, the right to a part of the Federation Account. As a result, this was a turning point in Nigeria's history of local government autonomy.

### **9. Autonomy of The Local Governments Under The 1999 Constitution**

This is allowed under the 1999 Constitution's clause 8(1), which was already mentioned. To emphasize the obvious, the ramifications of this autonomy guarantee are wide-ranging and all-encompassing. To begin with, the State governments through their States Houses of Assembly, are to draft the legislation that would govern the functions of local governments. In addition to the clauses in section 9 of the Constitution that were already mentioned, the fact that Nigeria operates under a multiparty system means that the political parties in power may prevent other political parties from participating in local government administration. Voting against any legislation pertaining to local government would accomplish this as it now controls the legislature.

Similar to this, if local government bills are enacted by the legislature, the Governor, who is a member of the ruling party, may utilize cunning tactics to withhold his or her assent. The fact that so many state governments have resisted the Council elections in Nigeria is of judicial notice because of this constitutional requirement. The result of failing to hold local government elections is that many state governments have become accustomed to collecting the local governments' portion of the federal treasury. Because the State governments collect such funds that could go directly to local governments, they have been reluctant to call for elections. Another interpretation of this paragraph is that the "autonomy clause" under section 8 (6) is meaningless in light of section 8 (1), which placed the local government allocation of the Federal Account under the administration of State government officials in an indirect manner. According to the Daily Sun Newspaper of July 11, 2012, the team, led by Justice Alfa Belgore, made a case for an independent, stable, and incorruptible local government system that could be run by democratically elected officials on July 10 when they submitted their findings to the President, Goodluck Jonathan. This report appears to be referring to their pitiful situation in Nigeria. This advice is particularly pertinent and ringing in light of the sitting Governors' continual multiplication of Caretaker Committees while quietly postponing the council elections. However, no government has adopted it or published a White Paper on the subject.

### **10. Theoretical and Conceptual Framework**

The 1989 Constitution's sections 7 (7) and 7 (8), which state that the National Assembly shall establish measures for the statutory allocation of public money to the local governments in the Federation, have been subverted by some Governors who have used the aforesaid provision to their benefit. Because equity essentially refers to fairness and natural justice, the Governors' actions have amounted to a violation of the principle of equity, which declares that "Equity would not tolerate a Statute to be a cloak for deception."

Regarding local government autonomy, Abba and Nwanne maintain that it is necessary for local governments to have some degree of substantial autonomy, as shown by their financial and administrative independence and limited only by the requirements of state law and supervision<sup>44</sup>. Fagge points out that the constitutional provisions were insufficient to ensure her autonomy in other crucial areas because the 1979 Constitution had some flaws, such as choosing the Local Government Chairman through indirect election rather than through direct election from among elected councilors<sup>45</sup>. He also believes that the Constitution does not include a provision for local governments to have at least fiscal autonomy.

<sup>44</sup> Abba and Nwanne cited in O.E. Ezeani, *Local Government Administration*, Enugu, Chika Printing Press (2004) 40.

<sup>45</sup> *The Future of Local Institution in Democratic Governance in Nigeria* (2005) Government Printing Press, Kano 155 -116.

According to Tonwe, philosophically, local autonomy frequently connotes a community's right to self-determination or local democracy. He continues by stating that autonomy represents an attitude of independence, control, and a superiority complex<sup>46</sup>. He adds that the level of control and autonomy varies depending on the local government's organizational structure. For instance, the French pattern favours limited autonomy<sup>47</sup> for the majority of Western European, Near-Middle-Eastern, and Far-Eastern Councils, as well as for large portions of African nations, while the English pattern favours a comparatively higher level of autonomy for nations where its influence has been formally ended.

Local autonomy and governmental control were different in the former Soviet Union. It establishes elective councils with subordinate committees and grants local units a wide range of authority that is practically universal, but with rigorous party oversight and control from the higher tier of government<sup>48</sup>.

The following are the main components of local autonomy, according to Tonwe:

- i. The local government is an organization with all the legal rights that entails.
- ii. It has legal authority over the local community and residents.
- iii. The local populace is legally entitled to pick their own government.
- iv. Other wings are subordinate to the elected wing.
- v. It adopts the legally required local budgets.
- vi. It utilizes bye-laws to control municipal affairs.
- vii. It directs, oversees, and manages local government<sup>49</sup>.

These definitions unquestionably provide the local governments with the essential operating legal slack.

Tonwe further divides autonomy into two<sup>50</sup>: Politically and legally, he adds that when exercising its control over local governance, the federal or state governments must play four roles: promotion, prevention, punishment, and reformation<sup>51</sup>.

According to Umenzeakor,<sup>52</sup> Governors have gotten better over time at stifling local governments and usurping their authority by acting in a supervisory capacity. The relationship between the State and Local governments has been corrupted, shortchanging the common populace. The State government now finances its extra-governmental operations, such as settling political thugs and party hangers-on, with cash originally intended for local governments' development programmes. Council Chairmen are no longer formally Executives with authority, making it impossible for them to exert influence over the financial and political decisions made by their Councils. To the Governors, they serve merely as "errand boys." The same is true of State Assemblies, the majority of which have compromised and been taken advantage of by the Governors. This approach has negatively impacted her leadership without yielding any benefits. If the local governments are to become a reality, Kelvin's opinions are timely and must be swiftly addressed.

According to Nwabueze, it is up to the state governments to establish local governments and specify their roles under the constitution. To him, the claim that it is an autonomous third tier of government is plain false<sup>53</sup>. He goes on to say that the local government in Nigeria's Federal framework is an essential level of government<sup>54</sup>.

It is interesting that the 1999 Constitution's section 162(5) specifies that the funds held to the credit of local government councils in federal accounts must be distributed to the states in accordance with any rules the National Assembly may establish. Each State is required by section 162(6) to keep a special account known as a State Joint Local Government Account (SJLGA).

---

<sup>46</sup> Tonwe DA Aspects of the Theory of Local Government, Trust Publication, (2007) 196.

<sup>47</sup> *Ibid* 197.

<sup>48</sup> Alderfer, HF Local Government in Developing Countries 93 – 95.

<sup>49</sup> Tonwe, *Op.cit* 200.

<sup>50</sup> Tonwe *Op. cit* 203.

<sup>51</sup> *Ibid* 219.

<sup>52</sup> Umenzeakor K An Article in the Internet < [www.kelvinnzeakor.com](http://www.kelvinnzeakor.com) > accessed 2 June, 2022.

<sup>53</sup> Nwabueze BO Local Government Autonomy Reality or a Myth, Journal of the Nigeria Institute of Economic Research (NISER), Oyo, Ibadan 17.

<sup>54</sup> Nwabueze BO Federalism in Nigeria under the Presidential Constitution (1983), Longman, Lagos 123.

Umenzeakor<sup>55</sup> notes the paradox of local government autonomy, saying it is impossible to have local government autonomy in the absence of a strong democratic administration. Section 124 of the 1999 Constitution was amended by the 6th National Assembly, according to The Punch Newspaper, granting local governments<sup>56</sup> national financial autonomy. Also removed from the Constitution was the State Independent Electoral Commission, which gave the Independent National Electoral Commission the authority to conduct council elections<sup>57</sup>.

The National Assembly has urged that some of the 774 Local Governments established during military control be recognized as mini States, according to Ropo Sekoni.<sup>58</sup>

In order to meaningfully implement local government autonomy, the Niger Delta Budget Monitoring Group has urged for the repeal of the State and Local Government Joint Account System<sup>59</sup>. They claimed that the way this joint account is run has made it exceedingly challenging for rural areas to develop.

Asagba<sup>60</sup> in a newspaper article titled "Good Local Governance still a Mirage in Nigeria" also supports autonomy for Local Councils. NULGE's Ondo State Chapter has urged the federal government to see that the clause granting autonomy to the councils in the legislation amending the 1999 Constitution be approved by the various Houses of Assembly since a lack of autonomy results in the councils' overall ineffectiveness<sup>61</sup>. Some of the proponents who argue that local governments have been rightfully granted autonomy do so because:

i.federal funding provided indirectly to local government.

ii.the idea that rather than controlling local governments, states should help them.

iii.The Military administration conducted local government council elections in 1983, 1988, and 1990.

iv.a guideline that streamlined joint services with local governments and released state governments from oversight of local governments.

v.the promise that local government will withhold at source all statutory allocations that are not already paid to it.

vi.the current restructuring of local governments and the expansion of local government in some regions where there has been a demand.

vii.Instead of the previous system, which made the secretary the Chief Accounting Officer, local government Chairmen are now the Chief Executive and, implicitly, the Chief Accounting Officer.

viii.the conversion of the local government service commission from a statutory body to a constitutional one. But the crucial query is: Has she been granted autonomy as a result of the aforementioned factors?

It is accurate to say that the direct statutory allocation merely serves to acknowledge local governments as related governmental units and to prevent state governments from diverting their funds to unrelated uses. Additionally, the ostensible assistance from the state is neither explicit nor does it grant local governments autonomy in the true sense of the word. Additionally, the provisions do not include sufficient penalties for violations.

It is an established fact that some state administrations have frequently removed revenue-producing key activities from local governments without consequence and hence with impunity. Local governments must follow the rules and regulations set out by the state governments that founded them at the time of establishment<sup>62</sup>. Being statutory entities, they are bound by the rules established by the laws that established them and are unable to act arbitrarily.

---

<sup>55</sup> Umunzeakor, *Op. cit* 14.

<sup>56</sup> *Ibid* 2.

<sup>57</sup> However the Amendments will have to be approved by two-thirds of the State Houses of Assembly before they can become operational.

<sup>58</sup> Sekoni R "With 774 autonomous Local Governments" States may Become superfluous, The Nation on Sunday, October 26, 2014 at 14.

<sup>59</sup> Vanguard, Thursday, September 11, 2014 at 10, Due to growing incapacity of the Nigerian Police to contain diverse Security Challenges.

<sup>60</sup> Asagba *op.cit* at 10.

<sup>61</sup> *Ibid* 24.

<sup>62</sup> Yakubu *op.cit* 57.

It is important to note that autonomy depends on the user's perspective of what it means and how it should be used, as it is frequently gravely misunderstood and misused by different people on different situations.

However, it is important to keep in mind that, due to regional differences, complete autonomy is not provided to local governments anywhere in the world. Given Nigeria's unique historical characteristics, this is not likely to change.

Do we then make a big deal out of this idea of complete autonomy, which is not only a mirage but also a myth to attain in local government? All we are arguing right now is that the paternalistic degree of control should be reduced in order to advance the idea of populism. The only thing left to do is grant<sup>63</sup> local governments functional autonomy, free from restrictions placed on them by their state governments or any other branch of the federal government. If control over some aspects of spending, in particular, is granted, there is concern that local government could morph into a state within states, creating an ambiguous and disjointed situation that could cause a clash of philosophies and harm growth. But for any system or government to give local government in Nigeria today autonomy, we should amend the 1999 constitution to give them both freedom to carry out their assigned duties as spelled out in the constitution and tools to enforce compliance with their bye laws, made financially sound enough to carry out their duties. Running a presidential system of government, as it were, does not *ipso facto* grant absolute autonomy to local governments.

## 11. Recommendations

1. In order to give local governments a distinct separate tenure with a guaranteed duration and a different appropriation system. We propose amending sections 7 and 8 of the 1999 Constitution.
2. To enable local governments to receive their share directly from the federation account rather than through the state government, the amendment should address the problem of joint allocation of monies from the federation account.
3. Sections 162 (6) and (8) of the 1999 Constitution should be deleted, and section 162 (5) of the subsection on state joint local government accounts (SJLGA) should be changed to a direct allocation to local governments.
4. Better checks and balances in local government will result from the appointment of independent auditors with solid credentials who come from the federal, state, local, and private sectors.
5. It is a positive development that the National Assembly approved the motion for local government autonomy, and all state assemblies should support the change to the 1999 constitution.
6. A constitutional amendment to remove the Federal Government's monopolies on the sale of weapons, ammunition, fingerprinting and identification technology for drugs and poisons, prison regulations, police<sup>64</sup>, business name registration, public holidays, banking, shipping, and modular refineries is advised in order to give autonomy meaning. The Concurrent Legislative list should include the Local Government as a level of government.
7. Local governments must get adequate resources as a result of the Constitutional amendment. For instance, local governments should be permitted to collect gift taxes, poll taxes, and inheritance taxes on real estate in order to increase their revenue.
8. Local governments should be given a return of a portion of some revenue-producing routes, such as building plan approval, vehicle licence, fee collection for forest royalties, and advertisement fees, which had previously been controlled by the state government.
9. elementary education is being brought back with greater funding, structure, and oversight as part of a grass-roots, more inclusive government.
10. Local government elections should be handled by federal electoral authorities rather than state electoral bodies, which are hand-picked or appointed by the executive and are always willing to do their bidding. This would promote greater autonomy and transparency.

<sup>63</sup> Gasiokwu, PI, Akpomedae EG (2022) Appraising Applicable Laws in Waste Management in Nigeria Commonwealth Law Review Journal vol 8 at 228.

<sup>64</sup> Awhefeada, UV, Esavwede, JP (2022) Creation of State Police and Its Constitutionality: An Imperative for the Nigerian State. Journal of Legal Studies and Research Vol 8 Issue 5 at 96.

11. For greater autonomy and to prevent abuse, it is imperative to review the monitoring powers granted to the National Assembly and State Houses of Assembly, particularly sections 128, 129, 88, and 89 of the 1999 Constitution.

12. The new amendment should include measures for local government status qualifying, appropriation, and tenure in order to achieve substantial autonomy.

13. Section 162 (2) of the 1999 Constitution, which mandates that 13 percent of federation revenue be paid into derivation funds, needs to be repealed because only 7.8 percent of that revenue is currently being sent. In addition to the 13 percent requirement being insufficient, any defaulter will be subject to local government sanctions.

14. Where there is political and fiscal liberty, reforms will have value.

## 12. Conclusion

There have been attempts to portray opposing viewpoints on local government autonomy, including those who believe it is desirable and others who do not. The difficulties or constitutional restrictions have been made clear. Findings also demonstrate that local governments are products of statutes and are therefore constrained in what they may achieve. They have to operate within the confines of the statute that established them. Therefore, should the powers and duties established by statutes be exceeded, such action will be *ultra vires* and void, as can be seen in numerous cases like *Prescott v. Birmingham Corporation*, where a resolution of the Birmingham City Council to allow old age pensioners to ride on its trains and buses was held to be ultra vires as the city of Birmingham operated a transport system under the private Acts of Parliament.<sup>65</sup> Our argument is that Nigeria will continue to wallow in poverty, terror, trauma, and the haze of Federal government control over various states and their numerous Houses of Assembly unless the 1999 constitution is amended to give the country's local governments a facelift and autonomy. "Our hope for few months to come," is a suitable conclusion.

## REFERENCES

- Abacha v. Federal Republic of Nigeria (2006) 4 NWLR, (pt. 970) 239.
- Abba and Nwanne cited in O.E. Ezeani, *Local Government Administration*, Enugu, Chika Printing Press (2004) 40.
- Abia State v. Attorney General Federation (2002) 3 SCNJ 158.
- Akon v. A.G. Cross River State (1982) 2 FNLR 177.
- Akpan v. Umah (2007) FWLR, (Pt. 110), P. 1820, 837-1838, Ratios 3 & 4.
- Appadorai, A: *The Substance of Politics* (New Delhi Oxford Universities Press (1975) 30.
- Aghayere, VO *Dominant Issues in the Nigerian Local Government System; A Contemporary Focus* (Imprint Service, Lagos, 1997) 126.
- Akande JO *Introduction of the Nigerian Constitution*, London Sweet and Maxwell, 1988, 3.
- Alderfer, HF *Local Government in Developing Countries* 93 – 95.
- Awa, E *Issues in Federalism* (Benin City Ethiope Publishing Corporation, (1976) 65.
- Awhefeada, UV, Esavwede, JP (2022) *Creation of State Police and Its Constitutionality: An Imperative for the Nigerian State*. *Journal of Legal Studies and Research* Vol 8 Issue 5 at 96.
- Bello-Imam IB *Local Government in Nigeria; Evolving a third Tier of Government* (Heinemann Educational Books (Nig) Plc, Ibadan 2004) 111.
- Bownman A, Kearney RC (2002) *State, Local Government*, New York Houston Mifflin Co., Daily Sun Newspaper, (2012) July 11 at 6.
- Esavwede JP, Mukoro, MA (2019) *The Concept of Sustainable Development (SD) and Its Application to Oil Exploration in Nigeria*. *International Journal of Comparative Law and Legal Philosophy (IJOCLLEP)* Vol 1 no 1 at 191
- Fage TA *The Future Of Local Governments Institution In Democratic Governance In Nigeria*. (Tahir And Family Holdings Ltd, Kano, 2005 at 163.
- Garner, BA *Blacks Law Dictionary Seventh Edition*, Edited by West Group, St. Paul, Minn, 1999 at 130.
- Gasiokwu, PI, Akpomedae EG (2022) *Appraising Applicable Laws in Waste Management in Nigeria* *Commonwealth Law Review Journal* vol 8 at 228.
- Humes S, Martin EM. *The structure of Local Government throughout the World*. I. U. W. A, (The Hague, Netherlands, 1961) 1.
- Koehn P 'State –Local Relations in Nigeria'; Paper Presented at the International Political Scheme Ass. Regional Conference in New Delhi, 15 – 20 March 1988, at 3
- Laxim Kavitin, M (2005), *Public Administration*, New Delhi Tata Mc Graw Hill Publishing Co. Ltd 70.
- Mbuba FN, *Local Government Autonomy And the Nigeria Legal System: An Appraisal Journal of Social Sciences and Public Policy*, Vol. 6, No 1, 2014 at 1.

<sup>65</sup> (1982) 2 FNR 48.

- Mukhopadhyay A Central Local Relations: A Framework of Analysis: NAGAROLK, Vol. xiv, No. 4, Oct- Dec, 1982, 98 – 108.
- Nebo v. Okwelum (2009) ALL FWLR, (Pt. 484) 1508 at 1525, pars G- H, R. 3.
- Nwabueze BO Local Government Autonomy Reality or a Myth, Journal of the Nigeria Institute of Economic Research (NISER), Oyo, Ibadan, 17.
- Nwabueze BO Federalism in Nigeria under the Presidential Constitution (1983), Longman, Lagos 123.
- Nwabuoku. MOI, Gasiokwu, PI (2022) The Concepts of Justice and Equity and their Efficacy in the Administration of Justice in Nigeria Journal of Legal, Ethical and Regulatory Issues (JLERI) Vol 25 Issue 5 at 6.
- Ogisi UM, Omozue, OM (2022) Insecurity in ECOWAS: An Impediment to the Realization of Regional Integration, Commonwealth Law Review Journal vol 8 at 294.
- Ogisi, UM, Okumagba, EO (2021) International Law and Municipal Law: Towards a Unifying Framework of Applicability International Review of Jurisprudence and Law (IRLJ) Vol 3 Issue 1 at 90.
- Okoli, MU Local Government Administration System; An Introductory and Comparative Approach (Abort Books Ltd, Onitsha 2005) 14.
- Orewa, GO Reflections on Local Government Development in Nigeria, (Badagry ASSCON Press, (1991) 36.
- Oyewo AA Local Government Autonomy – Theoretical and Conceptual Frame Work, Socio – Legal Essays in Local Government Administration in Nigeria, Edited by John Ademola Yakubu, Demyaxs Law Books, 2008 at 54.
- Nigeria Constitution 1999 (as Amended).
- Sekoni R With 774 autonomous Local Governments” States may Become superfluous, The Nation on Sunday, October 26, 2014 at 14.
- Senior D quoted in Barber M.P in “Local Government” 3<sup>rd</sup> ed., M & E Handbook, Macdonald and Evans 25.
- Tonwe DA Aspects of the Theory of Local Government, Trust Publication, (2007) 196.
- Umenzeakor K An Article in the Internet< [www.kelvinzeakor.com](http://www.kelvinzeakor.com)> Accessed 2 June, 2022.
- Yakubu, JA Socio-Legal Essays in Local Government Administration in Nigeria, Demyaxs Law Books Nig. Ltd, Ibadan (2003) 9.
- Yisa v. Ojo Local Government (2004) FWLR, (Pt. 194) 439, 455, Par. A-C, Ratio 6.