

**REPOSITIONING THE LOCAL GOVERNMENTS FOR
EFFECTIVE GRASSROOT PARTICIPATION IN
DEMOCRATIC GOVERNMENT AND DEVELOPMENT
IN NIGERIA: *ATTORNEY GENERAL OF THE
FEDERATION v ATTORNEY GENERAL OF ABIA
STATE & 35 ORS (2024) AND THE UNMET NEEDS***

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Abstract

Despite the Constitutional framework guaranteeing the existence of democratically elected Local Government Councils, and the Local Governments as an independent and autonomous third-tier government of the Nigerian federalism, the independence and autonomy of the Local Government Councils have remained an issue. It is to resolve this issue and guarantee the independence and autonomy of the Local Government Councils that the Attorney General of the Federation filed the suit, AG Federation v AG Abia State & 35 Ors. In this case, the Supreme Court in its majority judgements made some far-reaching declarations and granted some reliefs reaffirming the democratic status and financial autonomy of the Local Government Councils. This work examined the extent to which the Supreme Court judgement restores the independence and autonomy of the Local Governments for effective grassroots participation in democratic governance and development. The research design is purely descriptive. The information from these sources is analysed, adopting a content analysis

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approach where necessary. The work, while commending the Supreme Court's efforts to erk a constitutional status and autonomy for the local governments, found that the judgment has not fully resolved the constitutional issues about the independence and financial autonomy of the Local Government Councils. The need for clear constitutional alterations remains inevitable. The work, therefore, advocated for constitutional alterations to enshrine in unambiguous terms democratic decentralisation of sovereign powers, establishing the Local Governments as an independent and autonomous third-tier of the government of the federation.

Keywords: *Nigerian federalism, 1999 Constitution, States/Local Governments' relationship, Local Governments' independence and autonomy, the Supreme Court judgement.*

1. Introduction

Nigeria is a federation. The Nigerian federalism covers the Federal, State and Local Governments.¹ Local Government is intended to be the third tier of the government of the federation.² Like in every democratic system, the local government in Nigeria is the foundation or base of governance, intended to link the grassroot, rural communities and the other two tiers of governments, the

¹ Constitution of the Federal Republic of Nigeria (as amended) 1999 (CFRN), ss 1,2, 3(6), 7(1) & 162(3); *Attorney General of the Federation v Attorney General of Abia State & 35 Ors.* (2024) Suit No SC/CV/343/2024 judgement delivered 11th July 2024 where the Court re-emphasized that Nigeria is federation with three tiers of government, Federal, States and the Local Governments which must be respected and treated accordingly; TO Elias, *Nigeria The Development of its Laws and Constitution* (London, Stevens and Sons, 1967) 41-50; JA Akande, *Introduction to the Constitution of the Federal Republic of Nigeria 1979* (Sweet & Maxwell London, 1982) General Introduction; TA Aguda, *Constitutional Development in The Challenges of Nigeria Nation: An Examination of its Legal Development 1960 to 1985* (Heinemann Educational Books (Nigeria) Limited Ibadan, 1985) 3.

² Suit No, SC/CV/343/2024, Judgement delivered on the 11th July 2024.

Federal and State Governments.³ However, the quagmire in the inter-governmental relationship between the State governments and Local Governments for effective grassroots participation in governance and development under the Nigerian federal system has remained a challenge.⁴ This anchors on the issue of the status and the autonomy of the Local governments. To the State governors, the local governments are appendages of the States and exist at the whims and caprices of the State governments. This has remained so despite the repeated judicial declarations on the constitutional status of the local governments, in particular, that the local government is the third-tier of the government of the federation; and that no State government shall dissolve a democratically elected local government authority and replace same with a Caretaker Committee or any other form of leadership.⁵

It is in reaction to the continued disregard of the constitutional status of the Local Governments that the Attorney General of the Federation instituted this originating action, the *AG Federation v AG. Abia State & 35 Ors*⁶ at the Supreme Court. The Supreme Court

³ OE Uya, 'Local Government as the Cornerstone of People-Centered Democracy: Welcome Address' in Okon E Uya and James Okoro (eds), *Local Government as the Cornerstone of People-Centred Democracy: A Welcome Address in Local Government Administration and Grassroots Democracy in Nigeria* (Calabar: University of Calabar Press, Calabar, 2002) 8; JA Egonmwan, 'Structure of the Local Government in Nigeria' in Uya and Okoro, (eds) (n4) 10-34.

⁴ Uya (n3), 4-10; Egonmwan (n3) 10-34; AA Akinanya, 'Auonomy, Subordination and Local Government System' in Uya and Okoro (eds) (n3) 35-53; Adadeji, Adebayo & Bamidele, *People Centred Democracy in Nigeria: Alternative Systems of Grassroot Government at the Grassroot* (Heinemann Educational Books (Nigeria) Limited, 2000); Dauda Adeyemi Ayiroosu, 'Constitutionalism: The States/Local Government Relations: Ways towards effectiveness' [2022] (5)(6) *NILDS Journal of Law Review*, 1-19.

⁵ *Friday v Gov. of Ondo State* (2022) 16 NWLR (Pt 1857) 585 at 648 SC; *Ajuwon v Gov. of Oyo* (2021) LPELR-55339 (SC); *Gov. of Ekiti State v Olubunmo* (2017)13 NWLR (Pt. 1551 7; *Eze v. Gov of Abia State &Ors* (2014) NWLR (Pt.1426) 192.

⁶ Suit No. SC/CV/343/2024 unreported.

in its judgement in this case reaffirmed its earlier declaration that the local government is the third-tier of the government of the federation; and that no State Government shall dissolve a democratically elected Local Government Council and replace same with a Caretaker Committee or Administrator. It further declared that the Federal Government allocations to the Local Governments should be paid directly to Local Governments as opposed to the existing practice of payments through the State Governments and that Local Governments under Caretaker Committees or other forms of Leadership outside a democratically elected leadership should be denied the allocations from the Federation Accounts meant for the Local Government Councils. However, it is the extent to which these judicial declarations and reliefs have strengthened the Local Governments and restored the vision and mission of the Local Government Councils as a third-tier of government for effective grassroot participation in governance and development for sustainable democracy and development that has remained the issue.

It is within this context that this work explores the extent to which the local government system is guaranteed under the 1999 Constitution as a viable third-tier of government for effective grassroot participation in governance and development; the distortions in the State Governments and Local Governments relations and the extent to which the Supreme Court declarations and reliefs in *AG Federation v AG Abia State* guarantees the independence and autonomy of the Local Governments for effective democratic grassroot participation in governance and development in the Fourth Republic. The aim is to tinker with other constitutional, policy and implementation measures that would adapt the Local Governments as a third-tier of government for effective grassroot participation in democratic governance and development under Nigeria's federalism. This has become necessary because of the role and importance of grassroot participation in government in any democratic system. Nigeria cannot be an exception.

Apart from this introduction, the work starts by exploring the concept of the local government system generally, the local government system in Nigeria and in particular under the 1999 Constitution; and the Supreme Court declarations and reliefs in *AG Federation v AG Abia State* (2024). The last part of the work is the conclusion and recommendations to position the Local Governments for effective grassroots participation in democratic governance and development under Nigeria's federalism.

The work maintains that the Supreme Court declarations and reliefs in *AGF v AG Abia State & 35 ors*, as they are, have not repositioned the Local Governments for democratic grassroots participation in governance and development nor changed the Local Governments and State relations in the inter-governmental relations as envisaged under the 1999 Constitution. The need remains for unambiguous constitutional alterations if the independence and fiscal autonomy of the Local Governments under the 1999 Constitution must be guaranteed and achieved. The repositioning of the Local Governments for effective grassroots participation in democratic governance and development is important because sovereignty belongs to the people, hence it must be a government of the people, by the people, for the people.⁷ A democratic government without grassroots participation cannot be a government of the people. Scholars have re-emphasised this fact that:⁸

No democracy can become dynamic and sustainable if the systems of government at the grassroots level are not solidly people-centred, participatory and accountable.

It is, therefore, all about an inter-governmental relations system that will accommodate the grassroots participation in democratic governance through the local government system, and imbibe the

⁷ CFRN, s14(2) (a) & (c).

⁸ OE Uya (n3) 8.

indices of good governance and sustainable democracy and development for the people.⁹

2. Local Government System

Local self-governance is as old as society itself and is the oldest form of public rule in human history.¹⁰ It is of note that village dwellers and settlers organised themselves or their communities in several forms to achieve some community objectives. The community organisation for community lives remained a form of government of the people, by the people, for the people or a grassroot method of self-rule or governance, as the case may be. Their main concern and focus were on how to meet the immediate needs of the people without any intermediary or other body between the body and the people.¹¹ This ultimately crystallised into modern-day local governments in their various communities or areas, with different styles of leadership and functions.

Thus, the local government system of government has become a permanent and integral part of government in modern government, though with varying structures and styles of leadership, because of the role and services they render in their various areas and governance generally.¹² In effect, the local government system of government is acclaimed as the cornerstone or bedrock of people-oriented-centred democracy globally.¹³ It is that level of government that is in constant touch and serves as the barometer of government success or failure for the grassroot population, particularly in an environment like Nigeria, where the majority of the population lives

⁹ CFRN, s14 - the Marginal Note.

¹⁰ Horst Risse, C. Andrew, D. Singh, S. Kesuwani, Caroline Andrew and others, 'Local Government in Federal Systems' (2008) 3-18 at <www.forumfed.org/libdoc/intConfFed07/vol.4> accessed 15 June, 2024.

¹¹ Ibid; Uya (n3) 6.

¹² JU Ata-Agboni and others, 'Federalism and Local Government System in Nigeria: A Critical Assessment' [2023] (7)(4) *Journal of Good Governance Sustainable Development in Africa (JGGSDA)*, 15-27.

¹³ Uya (n4) 1,6.

in the rural areas outside the direct immediate influence of either the State or Federal governments.¹⁴

It has been emphasised that no democracy can become dynamic and sustainable if there is no solidly people-centred participatory and accountable local government system at the grassroots level. One would not be oblivious of the fact that even when the modern institution of government fails, it is usually at the local government levels that a semblance of government is sustained through the local or traditional institutions, such as traditional rulership and other community associations.¹⁵ In effect, the role and importance of local government in a governmental system, whether under a unitary or federal system, cannot be overemphasised. It is the key interface between the grassroots people and the State, which must be integrated into the general governmental structure for sustainable democracy and development. The mission is to bring the government closer to the grassroots, increasing the people's understanding and support for socio-economic activities that will foster the socio-economic well-being of the people. Thus, Local Governments generally perform some specific and area-related functions in their areas of operations to meet certain needs concerning their locality for rural development and transformation.¹⁶

It must, however, be emphasised that the autonomy of the Local Governments for the effective performance or discharge of their

¹⁴ Ibid, 6. For other definitions and conceptual clarifications see WJN Mackenzie, *Theories of Local Government in Explorations in Government* (Palgrave Macmillan London, 1975) 68-88; GO Orewa, *Principles of Local Government* (Administrative Staff College of Nigeria (ASCON) 1991) 22; KM Mowoe, *Constitutional Law in Nigeria* (Malthouse Law Books Lagos, 2008) 239 citing the 1976 Local Government Reforms Report defining Local Government; Ayiroosu (n4) 1-19.

¹⁵ Uya (n4) 6.

¹⁶ Egonmwan (n4)13; Risse (n10) 3-18; Ata-Agboni (n12)15-27; MA Olong and UE Okolocha, 'Finance and Functions of Local Government' [2016] (6) *University of Ibadan Law Journal*, 77-96

roles and functions will depend on the powers granted or allocated to the Local Governments by the Constitution and the law. This will also depend on the quantum of revenue allocated to the Local Governments, the extent to which they are allowed to generate revenues, including manpower and the sources of revenue to discharge the functions, supervision of expenditure and inspection, linkages and relationships with stakeholders in the various areas. Hence, the independence and autonomy of the Local Governments cannot be compromised.

Even the United Nations recognises the existence of the local government system as a political sub-division of a nation or, in a federal system, a state which is constituted by law and has substantial control of local affairs, including the power to impose taxes or exact labour for prescribed purposes.¹⁷ The differences in the local government systems, as noted, depend on the structure, leadership and the inter-governmental relations generally.¹⁸ It is within this context that this work in this part explores the local government system in Nigeria and the inter-governmental relations between the local governments and the State governments generally.

3. Local Government System in Nigeria

(a) The Local Government under the Colonial Era

The local government system of government has been part of the governmental system in Nigeria since the colonial era to the present day. However, the name, nature and administrative forms in which it existed and operated changed from time to time, depending on the governmental system and administration.¹⁹ The local government

¹⁷ Mowoe (n14) 239.

¹⁸ Osita Adah, 'Local Government Systems in United States of America and Britain: A Comparative Analysis and Lessons for Nigeria' [2022] (2)(3) *AKSU Journal of Administration and Corporate Governance*, 37-47.

¹⁹ To Elias, *Nigeria The Development of its Laws and Constitution* (1967) 73-93; Egonmwan (n4) 14-22; KE Ina 'The Evolution of Local Government in Nigeria' in *Local Government Administration and Grassroots Democracy* in

system was primarily designed to accommodate the heterogeneous nature of the people and the environments with diverse ethnic nationalities, languages, cultures and religions in governance and to ensure stable service delivery at the grassroot levels for sustainable democracy and development, hence it operated under the control of the regional governments.²⁰ The local governments provided stable local administration, which formed a base for the colonial government for the maintenance of law and order. It also provided other social services such as the network of feeder roads and maintenance, health services and general sanitation, primary education, policing, native courts and prisons in some cases, as well as agricultural services and other rural services.²¹

The Local Government Councils under the colonial era and parliamentary system enjoyed a great deal of autonomy in financial matters, personnel and general administration, irrespective of the fact that they were under the control of the regional governments. The Councils had adequate resources to carry out their functions. They had block grants and special vote revenue mainly from the regional governments and wide powers of rates and taxation to meet the costs of services provided by them in most cases. However, for transparency and accountability, the Councils were restricted in the award of contracts and supplementary allocations of funds to certain heads of the Councils' expenditure budget.²²

Nigeria' in Uya and Okoro (n4), 137-156. The names included, the sole Native authorities, federated Native authorities, County Councils, Local Government Authorities, Divisional, District and Local Councils etc in Uya (n3) 7.

²⁰ Joy U Ata-Agboni, 'Federalism and Local Government System in Nigeria: A Critical Assessment' [2023] (7) (4) *Journal of Good Governance and Sustainable Development in Africa (JGSDA)*, 15-27.

²¹ Egonmwan, 'Re-inventing Local Government in Nigeria: A Keynote Address'. In *Local Government Administration & Grassroots Democracy in Nigeria*, Uya and Okoro (eds) (University of Calabar Press, Calabar, 2002) 15.

²² Egonmwan, 'Re-inventing Local Government in Nigeria: A Keynote Address'. In *Local Government Administration & Grassroots Democracy in Nigeria*, Uya and Okoro (eds) (University of Calabar Press, Calabar, 2002) 16.

(b) Local Government under the Post-Colonial (Independence) and the Military Era

The local government system and administration were retained after independence. It continued to operate and functioned under the control and supervision of the regional governments, though still with varying governmental structure and administration. This was the status of the local governments until the military intervention in democratic governance.²³ The military government created the States and stopped the regional system of governments in Nigerian federalism. The military intervention and creation of states affected the functionality of the Local Government Councils. The State governments took over most of the functions and sources of revenue of the Local Government Councils. This made the Local Government Councils redundant and irrelevant in the development processes generally.²⁴

The military government later realised the need for the local governments for grassroots participation in governance and administration, hence the need to revive and reinvent the local governments. This need led to the 1976 local government reforms.²⁵ The reforms, however, introduced a uniform single-tier system of local government with defined functions between the States and the Local Governments. This brought to an end the varying governmental structures of local governments and the Divisional Systems of administration in existence under the independence Parliamentary system at the time.

However, the local governments, though under the supervision of the States, operated like a third-tier of government and a legal entity, even though under a Military Government. The Local Governments share from the Federation Account with the Federal and State

²³ The 1st military intervention was in 1966.

²⁴ Egonmwan (n4)16.

²⁵ Ibid.

governments. It also had other independent sources of revenue. In fact, the local governments were seen as viable instruments in governance and development, particularly the grassroots development in particular.²⁶ The strategic plan and projection of the local government system for effective grassroots participation in government and development, as set out in the Guidelines for Local Government Reforms 1976, is emphatic in its preamble that:

Government at the local level is exercised through representative councils established by law to exercise specific powers defined in areas. These powers should give the council substantial control over local affairs as well as the staff and institutional financial power to initiate and direct the provisions 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 those councils and through the active participation of the people and their traditional institutions, that local initiative and responses to local need and conditions are maximised.

This was the strategic plan and projection of the local government system for effective grassroots participation in government and development.

Subsequent reforms were made to strengthen the autonomy of Local Governments. In particular, the Autonomy of Local Government Decree No.50 of 1991 stripped the State Governments of their supervisory roles in the administration of the Local Governments. The federal government became directly involved in local government administration. The Federal Local Government Service Commission was established. The functions and responsibilities of the Local Governments were clearly defined with financial

²⁶ KE Ina 'The Evolution of Local Government in Nigeria' In *Local Government Administration & Grassroots Democracy in Nigeria*, Uya and Okoro (eds) (University of Calabar Press, Calabar, 2002) 147-151.

autonomy. This was the situation until the return to democratic governance in 1979 under a Presidential federal system as enacted under the 1979 Constitution.

(c) Local Governments under the 1979 Constitution Democratic Era

The 1979 Constitution guaranteed the existence of democratically elected Local Government Councils in the federation but empowered the States to provide under the law for the establishment, structure, composition, finance and functions of the Councils.²⁷ The Governments of the States are to ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote or be voted for at an election to a local government council.²⁸

The Local governments had statutory allocations of public revenue from the Federal and state governments²⁹ and shared in the Federation Account.³⁰ However, section 149 (2) of the Constitution, in particular, provided that:

1. The amount standing to the credit of local government councils in the Federation's Account shall be allocated to the States for the benefits of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.

It is also further provided in section 149 sub-sections (5), (6) & (7) that;

- (5) Each State shall maintain a special account to be called the **State Joint Local Government Account**,

²⁷ CFRN, s7(1) of the 1979.

²⁸ Ibid, s7(4)

²⁹ Ibid, s7(6).

³⁰ Ibid, s149(2).

into which shall be paid all allocations to the local government councils of the state from the federation's account and from the government account.

- (6) Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in a manner as may be prescribed by the National Assembly.
- (7) The amount standing to the credit of the local government councils of a state shall be distributed among the local government councils of that state on such terms and in such manner as may be prescribed by the House of Assembly of the State.

These Constitutional provisions greatly departed from the visions and missions of the Local Governments as envisaged under the 1976 Local Government Reforms.³¹ These provisions tacitly made the Local Governments appendages and agents of the State governments. Consequently, the State Governors capitalised on these provisions to treat the Local Governments as such. Thus, the envisaged independence and autonomy of the Local Governments under the 1976 Local Government Reforms became a mission of unfulfilled hope. The Local Government Councils again began to function and operate under the control and superintendence of the Ministry for Local Government and Chieftaincy Affairs and the Local Government Service Commissions of the States.

The operation of the Local governments became one of misallocations and misappropriation of funds. The Local

³¹ V Ayeni, 'The illusion of three-tier Federalism: Rethinking the Nigerian Local Government System' [1994] (7) (5) *International Journal of Public Sector Management*, 52-65; DO Adeyemo, 'Local Government Autonomy in Nigeria: A historical perspective' [2005] (10)(2) *Journal of Social Science*, 77-87; OM Ikeanyibe, 'Model and Determinants of State-Local Government's Relations in Nigeria' [2019] (53)(6) *Journal of Public Administration*, 1040-1065.

Governments became self-serving entities, spending their available funds on themselves, the administrators, the politicians and their thugs in the areas at the expense of the Local Government Areas and democratic decentralisation and the area developments. In effect, the Local Governments remained moribund under the Third Republic. This was the fate of the local governments until the subsequent military intervention in democratic government in 1983. Unfortunately, the military intervention did not revive the Local Governments. The Local Governments remained in that precatory state, waiting for a renewed hope. This was the fate of the local government when Nigeria returned to democratic government in 1999 under the 1999 Constitution of the Federal Republic of Nigeria.

4. The Local Government System Under the Constitution of the Federal Republic of Nigeria 1999 (As amended)

(a) Existence, Powers and Functions of the Local Government

The 1999 Constitution, like the 1979 Constitution, recognises and insists on the democratic existence of the local government as a third-tier level of government for effective grassroot democratic governance and development. Section 3(6) of the 1999 Constitution, in particular, specified the number of existing Local government Areas in the various States of the Federation and the six Area Councils in the FCT. Section 7(1) of the 1999 Constitution emphasised that “the system of local government by democratically elected Local Government Council is under this Constitution guaranteed...” The Section further empowers the State Governments to ensure the establishment, structure, composition, finance and functions of the Local governments in the States under the Constitutional process.³² The State Governments are also to ensure that elections are conducted through the state electoral bodies for the

³² CFRN, s7(1).

election of the local government officers, the chairperson and the councillors.³³ But the Constitution did not provide for the tenure of the Local Government Councils. This is left for the States to decide. This has remained a bane to the independence and administration of the local government councils. Section 7(3) of the Constitution further provides that:

It shall be the duty of a local government council within the State to participate in economic planning and development of the area... and to this end, an Economic Planning Board shall be established by law enacted by the House of Assembly of the State.

It is submitted that this provision has also remained a clog or fetter on the independence and autonomy of the Local Government Councils, as the Councils cannot embark on the performance of their constitutional functions without a law made by the House of Assembly of the State. This is particularly so as the Local Governments have no primary legislative powers under the Constitution. Even though it can operate through bye-laws, the bye-laws must be based on laws enacted by the Houses of Assembly of the States. Even the establishment of the Economic Planning Board, through which the Local Government Councils will participate in economic planning and development of the areas, has remained a mission of unfulfilled hope in many States.

Though section 7(5) of the Constitution provides that the specific functions for the Local Government Councils are as contained in the Fourth Schedule to the Constitution. This is intended to restore the local governments as a functional and viable third-tier of government in the new Nigerian presidential democratic dispensation under the Fourth Republic. It is also for this purpose that the Local Governments are to share in the Federation Account³⁴ and are also entitled to allocations from the State

³³ CFRN, s7(4), 197(b), 198.

³⁴ *Ibid*, s162(3).

revenues, as the case may be.³⁵ These sources of funds are independent of internally generated revenues (IGRs) by the Local Governments, as the case may be.

But the extent to which the State governments allow the Local Governments to perform their constitutional functions and the availability of funds for the effective discharge of the functions or any other function have remained a major issue under the Fourth Republic.³⁶ This brings to focus the issues of the independence and financial autonomy of the Local Government Councils under the 1999 Constitution.

(b) Independence and Financial Autonomy of the Local Governments

One of the fundamental principles of a federal system is the independence and autonomy of the federating constituents under the Constitution of the federation.³⁷ This is also intended to extend to the Local Governments. Thus, for the Local Governments to be a viable and functional third-tier of government, their independence and autonomy must be guaranteed and manifest in the powers and functions allocated to them under the Constitution, including the quantum of funds available to them for the discharge of their constitutional functions, the extent to which they are also allowed to generate revenues internally (IGR) and the sources of their internally generated revenue generally.³⁸

There is no doubt that the Local Governments are the third tier of government and are saddled with some functions and responsibilities under the Constitution.³⁹ Thus, for the effective

³⁵ CFRN, s162(5)(7)(8).

³⁶ *Attorney General of the Federation v. Attorney General of Abia State* [2024] (Unreported).

³⁷ Mowoe (14) 49-92; Elliot Bulmer, *Federalism* (International IDEA Constitution-Building Primer 12, 2017)1-38.

³⁸ Egonmwan (n4) 24.

³⁹ CFRN, Fourth Schedule, s7(3)(5).

discharge of the functions allocated to the Local Governments under the Constitution, the revenues and the sources of some of the revenues are also guaranteed and secured under the Constitution. Specifically, section 7(6) of the 1999 Constitution provides:

- a. The National Assembly shall make provisions for statutory allocations for public revenue to local government councils in the federation.
- b. The House of Assembly of a state shall make provisions for statutory allocations for public revenue to local government councils within the state.

In the same vein, section 162(3) is emphatic that any amount standing in credit of the Federation Account shall be distributed among the federal and the state governments and the local government councils in each State accordingly.

Furthermore, section 162(5) of the Constitution provides that:

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 the Local government councils on such terms and in such manner as may be prescribed by the National Assembly.

In the same vein, sections 162(6) 162(7) and 162(8) of the Constitution provide as follows:

162(6) Each State shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the Local government councils of the State from the Federation Account and from the Government of the State.

162(7) 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.

162(8) The amount standing to the credit of Local government councils of a State shall be distributed among the Local government councils of the State on such terms and in such manner as may be prescribed by the House of Assembly of the State.

By these provisions, it is not in doubt that the primary sources of revenues for the Local Governments for the discharge of their Constitutional functions are from the federal and State governments. The States are the conduits through which the Local Governments can access these funds, from the Federation Account and Statutory allocations from States, for their developmental programmes.⁴⁰ But the accessibility of these funds by the Local governments from the State governments has remained a challenge, raising the issues of the independence and financial autonomy of the Local governments.

It is a known fact that the States' governments do not make the constitutional allocations to Local Government Councils. Even the allocations from the Federation Account to the States for the benefit of the Local Government Councils are retained and centrally managed by the State governments.⁴¹ The sources of internally generated revenue (IGR) for the Local Government Councils can only be stimulated by the indulgence of the state governments through the State Houses of Assembly.⁴² These are clear inhibitions on the functionality of Local governments as an independent and autonomous third-tier of government for effective grassroot

⁴⁰ CFRN, s7(5).

⁴¹ *Attorney General of the Federation v. Attorney General of Abia State & 35 Ors* (2024) (unreported).

⁴² CFRN, s7(5).

participation in democratic governance and development under the 1999 Constitution.

Curiously, as noted, Section 2(2) of the Constitution is clear that Nigeria shall be a federation consisting of the Federal, States and the Federal Capital Territory (FCT). The Local Governments are not expressly included. Though section 7(1) of the Constitution guarantees the existence of democratically elected Local Government Councils. But the existence of democratically elected Local Government Councils, as envisaged under the Constitution, can only be simulated by the State governments.⁴³ Curiously, also, the tenure of the Local Government Councils is to be determined by the State Governments. It is also within the powers of State governments to create new Local governments following the conditions specified under the Constitution.⁴⁴ It is also the State Governments that have the powers concerning matters connected with the election of the Local Government officers.⁴⁵ These powers of the States over the Local Governments have remained an inhibition on the independence and autonomy of the Local Governments. The incursion of the independence and autonomy of the Local Governments arising from the exercise of these powers by the States is fresh in our memories. Unfortunately, judicial declarations and reliefs to curtail the political rascality and irresponsibility of the political class and their agents in dealing with the issues of the independence and autonomy of the Local Governments as the third-tier of the government under the 1999 Constitution have yet to make any progressive impact.⁴⁶

⁴³ CFRN, s197(b), 198.

⁴⁴ *Ibid*, s8(3).

⁴⁵ *Ibid*, s7(4), 197(b), 198; *Attorney General of Abia State & 35 ors v. AG Federation* (2002) 3 SCNJ 158.

⁴⁶ *Ajuwon v. Governor of Oyo State* (2021) LPELR-55339 (SC), *Governor of Ekiti State v. Olubunmo* (1917) 13 NWLR (Pt.1551)1; *Eze v. Governor of Abia State & Ors* (2014) 14 NWLR (pt.1426)192, *APC & Ors v. Enugu State Independent Electoral Commission & Ors* (2021) LPELR-55337 (SC); *Friday v. Governor*

Still more, section 128 of the Constitution empowers State Houses of Assemblies to direct or cause to be directed an inquiry or investigation into governmental activities in the States, including Local Government Councils, to expose corruption, inefficiency and waste in spending of public funds and administration in the State generally. No arm or office in the local government structure can perform this function. It is the business of the States' House of Assemblies, or as the State Governors may deem fit, unfortunately.

One must also not be oblivious of the fact that the Constitution is silent on the executive, legislative, and judicial powers of the Local Governments as the third-tier of the government generally. These are limited to the federal and State governments as defined under the Constitution.⁴⁷ This also raises the issue of the Local Governments as a functional third-tier of government under the Nigerian federalism.

The lack of independence and financial autonomy of the Local Government Councils are part of the reasons, among others, for the call for the alteration of the 1999 Constitution to make the Local Government Councils an effective independence and financial autonomy third-tier government for effective grassroots participation in government and development under the Nigerian federalism in the Fourth Republic. But this, among others, has remained a mission of unfulfilled hope.⁴⁸

of Ondo State (2022) 16 NWLR (pt.1857) 585 at 648 SC; *The Attorney General of the Federation v. Attorney General of Abia State* (2024) (unreported). It is, however, of note that the National Assembly is trying to enact a law empowering INEC to conduct Local Governments elections following the ridiculous outcome of the local governments elections throughout all the States this year, 2024.

⁴⁷ CFRN, ss 4, 5 & 6 of the 1999 Constitution respectively.

⁴⁸ A Adedeji, & Bamidele Ayo, 'People-Centered Democracy in Nigeria: *The search for Alternative systems of government at the Grassroots*' (Heinemann Educational books, 2000); PO Oviasuyi and others, Constraints of Local Government Administration in Nigeria' [2010] (24)(2) *Journal of Social*

It is also the crisis of the independence and autonomy of the Local Governments that compelled the Attorney-General of the Federation to institute an action through an Originating Summons against the thirty-six (36) States of the federation in 2024, the Attorney General of the Federation v the Attorney General of Abia State & 35 Ors.⁴⁹ It is the outcome of this suit and how it impacts the independence and the autonomy of the Local governments that is the focus in this part. The issue is, to what extent has the Supreme Court judgement repositioned the Local Governments as an independent and autonomous third-tier government for effective grassroots participation in governance and development in the Nigerian federalism? It is within this context that the Supreme Court judgement is highlighted and discussed in this part of this work.

4.1. Attorney General of the Federation v Attorney General of Abia State & 35 Ors

The dispute is over the failure or refusal of the States to pay to the Local Governments the allocations from the Federation Account as enquired under the Constitution and the continued administration of Local Government Areas by some States through Caretaker Committees or Administrators or Interim Councils, contrary to S.1.(2) and S.7(1) of the 1999 Constitution, despite the Supreme

Sciences, 81-86; J Asaju, 'Local Government Autonomy in Nigeria: Politics and Challenges of the 1999 Constitution' [2010] (1)(1) *International Journal of Advanced Legal Studies and Governance*, 98-113; AA Anyebe, 'Federalism as a panacea for cultural diversity in Nigeria' [2015] (15)(3) *Global Journal of Human Social Science: Sociology & Culture*, 15-24; V Ayeni, 'The illusion of three-tier federalism: Rethinking the Nigerian local government system' [1994] (7)(5) *International Journal of Public Sector Management*, 52-65; Oyedele, S.O and others' 'Local government administration and National Development in Nigeria: Challenges and Prospects' [2017](1)(1) *Ilorin Journal of Human Resource Management*, 142-154; Ikeanyibe, O.M, 'Model and determinants of state-local governments' relations in Nigeria' [2019] (53)(6) *Journal of Public Administration* 1040-1066; Ayiroosu (n6).

⁴⁹ *Attorney General of the Federation v. Attorney General of Abia State ors* (2024) suit SE/CV/343/2024 Judgement delivered on the 11th day of July 2024. (unreported).

Court declaration of the unconstitutionality of the State Governors running the Local Governments through non elected officers.⁵⁰

The case of the plaintiff is that since the states have for decades persistently refused to pay to Local Government Councils the money standing to the credit of their Local Governments in the Federation Account in violation of S.162(4), (5) and (6) of the 1999 Constitution, the Federation can validly pay the said money directly to their owners (the Local Governments) to protect the intention or objective of the Constitution from being defeated, that the governance of Local Government Areas by States using appointees or officers of States such as Local Government Caretaker Committees, Interim Councils and Administrators amounts to governing or taking control of the government of a Local Government Area, a part of Nigeria, contrary to S.7(1) of the 1999 Constitution and therefore in violation of S.1(2) of the 1999 Constitution and that the above mentioned acts of the States in violation of S.162(4), (5) and (6), S.1(2) and S.7(1) of the 1999 Constitution have endangered the continued existence of the Local Government as a third tier of the Federal Governance structure, as most of them are now virtually extinct.⁵¹

The case of the defendants taken together is essentially that the Federation cannot validly pay the money standing to the credit of the Local Governments in the Federation Account directly to Local Government Councils as to do so would be in violation of S.162(5) and (6) of the 1999 Constitution that require that it be paid directly to the States for the benefit of their Local Government Council and that each State pay same into a State Joint Local Government Account maintained by the State, that the States are entitled to retain the said allocation and use it for the benefit of Local Government Councils, that the failure of some of the States to organize the conduct of democratic elections of local government councils is not

⁵⁰ The facts are extracted from the lead Judgement of Agim, JSC.

⁵¹ Ibid.

deliberate as there are subsisting orders of courts in pending suits restraining them from holding democratic elections of Local Government Council in their States.⁵²

The Supreme Court, in a majority judgement, among other declarations,

- (a) reaffirmed the existence of the local governments as the third-tier of government in Nigeria and not the agents of the State Governments, hence their independence and autonomy must be respected in the spirit of the federal system under the 1999 Constitution.
- (b) It further re-declared that the leadership of the Local Government Councils must be democratically elected in compliance with section 7(1) of the Constitution and the unconstitutionality of States' Governors creating Caretaker Committees or Administrators to run Local Government Councils in place of a democratically elected leadership contrary to the Constitution.
- (c) Declared that the continued retention of Local Governments' funds and the use of the funds allocated to the Local Governments from the Federation Accounts by States is unconstitutional, illegal and contrary to the democratic principles intended to ensure that these funds are used for the benefit of the local communities.
- (d) And thus, the revenues due to the Local Governments from the Federation Account should be allocated to the Local Governments directly, unless where the States are to fully and

⁵² The facts are extracted from the lead Judgement of Agim, JSC.

promptly transfer the funds to the Local Governments.

This order is particularly necessary to revamp the grassroots participation in governance through democratically elected Local Government Councils in the spirit of Nigeria's federalism and make it clear that the Local Governments under the Caretaker Committees or other administrative arrangements should not share in the Federation Accounts.

According to the Court, in reaching these conclusions and to sustain the declarations, it adopted a benevolent, broad, liberal, objective and purposive principles of constitutional interpretation as opposed to a narrow, strict, technical and legalistic interpretation which would not promote its underlying policy and purpose. Thus, relying on a plethora of judicial authorities, Adim, JSC, maintained that:

This mischief rule of interpretation approach is particularly important in interpreting any part of a Constitution providing for governance in a constitutionally established democratic culture, in order to give the provision a meaning that promotes that values that underlie and are inherent characteristics of an open democratic society and to justify (the) hope and aspirations of those who made strenuous efforts to provide us with a constitution to ensure good governance, but also to protect the rights of Nigerians who are the beneficiaries of the provisions of the Constitution, particularly to ensure... durable democratic institutions.⁵³

Agim, JSC, relying on the dictum of Nweze, JSC, in *Saraki v FRN*, summed it all up where he emphasised that:⁵⁴

⁵³ These are extracted from the lead Judgement of Agim, JSC.

⁵⁴ (2016) 3 NWLR (pt.1500) 531 at 631-632.

... the rationale of all binding authorities is that a narrow interpretation that would do violence to its provisions and fail to achieve the goal set by the Constitution must be avoided. Thus, where alternative constructions are equally open, the construction that is consistent with the smooth working of the system, which the Constitution, read as a whole, has set out to regulate, is to be preferred... This approach is consistent with the 'living tree' doctrine of constitutional interpretation enunciated in *Edward v Canada* (1932) AC 124 which postulates that the Constitution "must be capable of growth to meet the future.

Based on these principles, Agim, JSC, in the lead judgement, maintained that the approach of a direct payment to the Local Government Councils would achieve the intention and purpose of the Constitution and accord with the smooth running of the system of paying Local Government Councils their allocations from the Federation Account. To the Court, there is no doubt that a literal and narrow construction of the word "shall" in S.162 (5) of the Constitution as imposing a mandatory duty on the Federation to pay Local Government Councils allocation from the Federation Account, only through the States, would mean that the Federation must pay it to the States only. According to the Court:

As the facts of this case have shown, such a literal application would work against the intention and purpose of the Constitution and create an unconstitutional status quo, unworkable and oppressive situations. To apply the word "shall" as making it mandatory for the Federation to pay Local Government allocations from the Federation Account through the States would make a constitutional provision prescribing the procedure to facilitate the enjoyment of a right created by the same constitution to override and even extinguish

the very right created by the Constitution, whose enjoyment it is meant to facilitate.⁵⁵

His Lordship, referring to the repressive attitude of the State Governors in their relationships with the Local Government Councils, maintained that:⁵⁶

In our present case, the person or body saddled with the constitutional responsibility to implement a method or procedure for the enjoyment of a right created by the Constitution is using that role to destroy that right. In a situation such as this, the constitution should not be applied in a manner as to support the destruction of the said right.

Relying on these judicial views, declarations and reliefs, it is now generally acclaimed that the Supreme Court majority judgement has cleared the doubts that existed about the independence and autonomy of the Local Government Councils as a third-tier government of Nigerian federalism. It is now also clear that the Local Governments are not subordinate to the State Governments, hence not under the control and superintendence of the State Governments. Furthermore, that the financial autonomy of the Local Governments as re-affirmed by the Supreme Court will reinforce government policies at the local communities as the Local Governments Councils can based on the judgement, boast of resources to carry-out their constitutional and statutory functions and duties effectively for the benefit of the grassroots and development of the rural communities.

However, the constitutionality and practicability of the Supreme Court declarations have remained a burning issue in the socio-political environment in Nigeria. Moreover, the dissenting opinion

⁵⁵ *Attorney General of the Federation v. Attorney General of Abia State ors* (2024) suit SE/CV/343/2024 Judgement delivered on the 11th day of July 2024. (unreported) 41-42.

⁵⁶ *Ibid*, 40-41.

of Abiru, JSC, in respect of the financial autonomy of the Local Government Councils and the Federal Government's direct payment to the Local Government Councils cannot easily be forgotten. Abiru, JSC, maintained that the resort to the mischief rule of statutory interpretation, the adoption of the broad, liberal and purposive principles of constitutional interpretation, in reaching the conclusions, is a misdirection. The approach adopted in the majority judgement does not align with the intention of the Constitution, as shown in the wording of section 162 of the Constitution. To him, constitutional alteration would have been a surer and sustainable way to deal issue of the independence and financial autonomy of the local governments. The answer does not lie within the purview of judicial intervention; hence, the declarations and reliefs by the majority judgement are unwarranted. According to His Lordship:⁵⁷

The prayer of the Plaintiff that this Court should order direct payments of the funds due to the Local Government Areas from the Federation Account to the Local Government Councils by the Federal Government, and thus bypassing the States, is in, my view, an invitation to this Court to engage in judicial legislation and to interpret the provisions of the Constitution in a manner that will undermine the very foundation of the nature of the federalism upon which the provisions of the Constitution were constructed.

One must also not be oblivious that the sources of funds of the Local Government Councils are not limited to the allocations from the Federation Account and grants from the Federal government. Allocations and grants from the State Governments remain major sources of Local Governments' funds. Even the drive for the internally generated revenues by the Local Governments is to be

⁵⁷ *Attorney General of the Federation v. Attorney General of Abia State ors* (2024) suit SE/CV/343/2024 Judgement delivered on the 11th day of July 2024. (unreported) 40-41.

simulated through laws made by the State Houses of Assembly. It is, therefore, not clear to what extent the Supreme Court declaration vesting financial autonomy on allocations and grants from the Federal Government to Local Governments will extend to the State Governments' control of funds from other sources outside the Federal Government funds.

Even though the Federal Government has set up a Committee on the implementation of the Supreme Court judgement, it is also doubtful how the recommendations of the Committee will be binding and implemented by the State Governments, as to guarantee the full financial autonomy to the Local Governments without a clear and unambiguous constitutional alterations of the sections of the Constitution as identified in this work that inhibit the functional independence and autonomy of the Local Governments as a third-tier of government for effective grassroots participation in democratic governance and development under the Nigerian federalism in the Fourth Republic.

5. Conclusion And Recommendations

The work concludes that the Supreme Court declarations and reliefs in the case under consideration are only a palliative to the challenges of the independence and autonomy of the Local Government Councils under the 1999 Constitution. Moreover, the practicality of the judgment in terms of enforcement and implementation has remained precatory. Thus, the thirst to bring the Local Governments out of the moribund state and to secure their independence and autonomy for effective discharge of their constitutional functions and duties cannot be doused by the Supreme Court judgement. The need for constitutional alterations to guarantee the independence and autonomy of the Local Governments as a functional third-tier of the government for effective grassroot participation in governance and

development under Nigerian federalism yearns for legislative intervention.

The work, therefore, calls for constitutional alterations to guarantee the independence and autonomy of the Local Governments for a sustainable local government system for effective grassroots participation in democratic governance and development under Nigerian federalism. The constitutional alterations must be directed to sufficiently accommodate the principle of democratic decentralisation, empowering and evolving responsibilities and autonomy to the Local Governments for effective grassroots participation in governance as a third-tier of government.⁵⁸ This, therefore, will require, among others, the alteration of the provisions of sections 2(2), 4,5, 6, 7, and 162, 197 (b) and 198 of the Constitution, in particular.

It is certain that the wordings and phraseology in the Constitution relating to the independence and autonomy of the Local Government Councils as they are, are beclouded with ambiguities. Even the Supreme Court noted the ambiguities, hence the resort to the mischief rule of interpretation as it did in this case. The alteration of these sections of the Constitution is imminently necessary to reflect in clear literary terms the aim and intention of the Constitution to establish the Local Governments as an independent and autonomous third-tier government under the 1999 Constitution.

The work further recommends that the constitutional alterations should accommodate a statutory linkage and relationship between the Local Governments and the area stakeholders, like the traditional rulers, chieftains, and other community groups, for an effective interface between the grassroots and the governments for

⁵⁸ The Guidelines for Local Government Reform in Nigeria, 1976 which emphasized this model for an independent and autonomous effective local government system for grassroots relevance and participation in governance in Nigeria.

sustainable development. The linkage and relationship, to a great extent, will also guarantee inclusiveness, mutual cooperation, transparency and accountability in some cases to reposition the Local governments for the effective discharge of their functions and responsibilities to the grassroots and the people. The guarantee of transparency and accountability measures will be one of the surest ways for dealing with the corruption, misappropriation and misapplication of the funds, which has become cancerous in the local government administration under the States' control and supervision as presently constituted.

It is submitted that the implementation of these constitutional alterations and measures, beyond the Supreme Court judgment under consideration, will, to a great extent, reposition the Local Governments for an effective local government system for grassroots participation in governance and development under Nigeria's federalism in the Fourth Republic.