

LOCAL GOVERNMENT AUTONOMY UNDER THE 1999 CONSTITUTION OF NIGERIA: A REALITY OR MYTH

I.C. Idoko*
&
A.E Obidimma

Abstract

Local government autonomy denotes the ability of the local governments to manage local affairs within their areas of jurisdiction under the Constitution a tier of government without unjustifiable encroachment by other tiers of government. Nigerian local governments have gone through series of reforms under the military regime to make them better but without much success. There were rampant cases of interferences on the councils' affairs by state government. For instance, elected local governments were constantly dissolved and replaced by state government's appointed agents. Under the 1999 Constitution, the councils are confronted with myriad of challenges as everything about them is controlled entirely by state governments. In effect, there is currently dearth of development at the grassroots. The masses do not feel the dividends of government by way of social service delivery at the local level. Local government has failed to impact on the lives of rural dwellers and the people are not made to know what governance is all about. Hence, rural urban migration has drastically increased. There are arguments to scrap local governments in the country for their failure to live up to their expectations. Local government is indispensable in the development of the country's grassroots because majority of Nigerians live in the rural areas. This study appraises whether local government autonomy under the 1999 Constitution of Nigeria is a reality or myth. The researcher employed doctrinal methodology in the course of the work. The examination got materials from primary and secondary sources such as statutes, judicial decisions, text books, journal articles, dictionaries, and the internet. The researcher utilized analytical approach in the analysis of data collected and collated. This inquiry found that local government autonomy under the 1999 Constitution of Nigeria is a myth and not real. This research recommends that the 1999 Constitution be amended in order to grant full autonomy to the local government in Nigeria so that it can live up to its expectations as the third tier of government in the country.

Keywords: Autonomy, Local Government, Devolution, Reform, Grassroots, Management, Constitution.

1. Introduction

The local government is established in the entire globe to boost development in the grassroots. It is geared towards devolution of powers to enable the locales to participate in management of their own affairs. It is meant to guide against over concentration of powers at the center; that is the federal government.

Nonetheless, the history of local government system in Nigeria is a chequered one, as the system has suffered a lot of transformations without any progress.¹ These include reforms in the system, such as the ones in 1950s – 1966, 1966 – 1975, 1976, 1985 - 1993 and 1993 - 1988. This is primarily because of the political nature of the country.² In many countries, local government has become the only and sure path to national integration, stability and development.³ National development has been canvassed to take off from the grassroots as the local government is widely known as a vital instrument for rural transformation and machinery for effective delivery of social-economic services to the people.⁴

The Constitution of the Federal Republic of Nigeria, 1999 (as amended),⁵ guarantees the existence of a democratically elected local government system under section 7 (1) like its 1979 counterpart. There are 774 local governments in the country and they operate a uniform system of local government administration.⁶ Local government under the 1999 Constitution is structured in a manner that empowered state governments to administer and control them as seemed best for them. The challenges of local government under the 1999 is constitutional because though the Constitution created the local government loosely as the third tier of government, it failed to make enabling provisions that will make it to operate as a tier of government in the real sense. Hence the chief bane of local government is lack of autonomy which is rooted on the loopholes in the 1999 Constitution.

* **IC Idoko**, LL.B (Hons); BL; Masters Degree Student, Faculty of Law Nnamdi Azikiwe University, Awka Anambra State, Nigeria.

AE Obidimma, PhD, Lecturer, Department of Public & Private Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State Nigeria

¹ Ben O Igwenyi, *Modern Constitutional Law in Nigeria* (Abakaliki: Nwamazi Printing & Publication Co Ltd, 2006) p.412.

² Lawrence A Nwangwu, 'Local Government Administration in Nigeria: Structural Development' in Chinelo G O Nzebilo, (ed), *Current Issues in Public and Local Government Administration* (Enugu: Fourth Dimension Publishing Co Ltd, 1991) p.16.

³ HP Faga, 'Separation of Powers and Functions of Local Governments in Nigeria's Constitutional Democracy: Ebonyi State as A Case Study' (2009) Vol 5, No 1, *University of Ilorin Law Journal*, 265.

⁴ Oyedele S Olanrewaju *et al*, 'Local Government Administration and National Development in Nigeria: Challenges and Prospects' <<https://www.researchgate.net/publication>> accessed on 2 February 2019.

⁵ Hereinafter referred to as the 1999 Constitution

⁶ CFRN 1999 section 3(6); these local government councils are enumerated in Parts 1 and 11 First Schedule to the Constitution.

This article analyses provisions of the 1999 Constitution of Nigeria on local government with a view to determining the reality or otherwise of the concept of local government autonomy under the 1999 Constitution. That is whether the councils enjoy autonomy as a tier of government as obtains with the federal and state governments. In so doing, we shall define some concepts related to the topic of discourse that will enable us comprehend the work better. We shall conclude the study with recommendations that will assist a great deal in revitalizing the local government.

2. Conceptual Clarifications

To deepen the appreciation of the topic under evaluation, there is need for a clarification of the meaning of some concepts and terms relevant in this study; the key one being Local Government. Local government, which may be simply recognized as that level of government at the local level, closest to the people has been variously defined by different scholars in different ways. Apparently due to the varied perspectives on the actual roles and purposes of local government which differ from one environment to the other, scholars are not agreed on a specific definition of the concept of local government.⁷ However, from whatever point the concept is defined it is to be noted that the concept of local government involves a philosophical commitment to democratize participation in the governing process at the grassroots level. This implies legal and administrative decentralization of authority, power and personnel by a higher level of government to community with a will of its own, performing specific functions as within the wider national framework.⁸ Various scholars have defined local government in many ways thus:- Local government is government by the popularly elected bodies charged with administrative and executive duties in matters concerning the inhabitants of a particular district or place.⁹ It is that tier of government closest to the people, which is vested with certain powers to exercise control over the affairs of the people in its

⁷⁷ AE Obidimma & EOC Obidimma, 'Legality of Caretaker Committees to Manage Local Government Councils in Nigeria' *International Journal of Innovative Research & Development* Vol. 5 Issue 5, 2016 ISSN 2278-0211(Online) <<https://www.internationaljournalcorner.com>> accessed on 12 February, 2020

⁸ D Arowolo, (2010), 'Local Government Administration and Challenges of Rural Development in Nigeria' < https://www.articlesbase.com/authors_dare-arowolo/49807> accessed on 28 August, 2015)

⁹ A Appadorai, *The Substance of Politics* (New Delhi: Oxford University Press, 1975) p.287.

domain.¹⁰ The United Nations Office for Public Administration defines local government as:

A political subdivision of a nation or (in a federal system) state which is constituted by law and has substantial control of local affairs including the powers to impose taxes or to exact labour for prescribed purposes. The governing body of such an entity is elected or otherwise locally selected.¹¹

The 1976 local government reform sees local government as:

Government at local level exercised through representative council established by law to exercise specific powers within defined areas. These powers should give the council substantial control over local affairs as well as the staff and institutional and financial powers to initiate and direct the provision of services and to determine and implement projects so as to complement the activities of the State and Federal Governments in their areas, and to ensure through devolution of these functions to these councils and through the active participation of the people and their traditional institutions, that local initiative and response to local needs and conditions are maximized.¹²

Local government is: 'A political devolution created by law with controlled autonomy for democratic participation in government and for the provision of local services and needs.'¹³ According to Ikoni and Anyogu:

The local government has these salient features: It is a government at the local level, it has autonomous existence and endowed with local status, specific powers are reserved for it, it exists within a defined territory, and it is a distinct tier of government which exercises authority over a given population. It must provide opportunities for the promotion of welfare and

¹⁰ S Lawal, 'Local Government Administration in Nigeria: A Practical Approach' in K Ajayi, (ed) *Theory and Practice of Local Government* (Ado Ekiti: UNAD, 2000) p.60.

¹¹United Nations Office for Public Administration, in F R Ola, *Local Administration in Nigeria* (London: Kegan Paul International Plc, 1984) p.12.

¹² Guidelines for Local Government Reform (Kaduna: Government Printer, 1976) p.1.

¹³ PC Akpan, *Modern Local Government Administration in Nigeria* (Kaduna: Baraka Press, 1984) p.28.

well-being of the members of the community and it comprises of elected members.¹⁴

Ikpotor, posits that, ‘The Nigeria constitutions have since 1979 consistently allocated functions to local government councils and the courts have held that within the allocated functions, the local government enjoy exclusive of powers... That the local government can properly be termed a tier of government... The usefulness of the local government system cannot be over-emphasized. It is recognized as a viable instrument for rural transformation and the delivery of social services to the people.’¹⁵ It is further opined, ‘Local government authorities which constitute the third tier of government in Nigeria have come to be recognized as important components of the democratic structure in the country. This recognition dates back to the 1950s when British colonial administrators introduced features of democratic governance at the local levels based on their perception of the significant and strategic role of this tier of government in the development process.’¹⁶

Apart from Local Government, other relevant terms used in this paper such as Autonomy, Devolution and Reform are also defined.

Autonomy has been defined as, ‘the right to self-determination; a self-governing nation; an individual’s capacity for self-determination.’¹⁷ ‘Local autonomy is primarily concerned with the question of responsibilities, resources and discretion conferred on the local authorities. As such, discretion and responsibility are at the core of local government.’¹⁸

According to Ikoni and Anyogu, local government autonomy ‘refers to the attribute that allows the local government substantial freedom and independence to function without undue, indiscriminate and unbridled interference from an external authority

¹⁴ UD Ikoni and Felicia Anyogu, ‘The Jurisprudence of Local Government Administration and the Challenges of Rural Development: The Nigerian Experience’ (2014) Vol 3, *EBSU Journal of International and Juridical Review*, 137.

¹⁵ TR Ikpotor, ‘Federalism and the Local Government System in Nigeria’ (2014) *DELSU Readings in Law*, 100 & 104.

¹⁶ Nlerum S Okogbule, ‘Legal Control of Local Government Authorities in Nigeria,’ (1995 - 1998) Vol 4, *Property & Contemporary Law Journal*, 157.

¹⁷ Bryan A Garner, (ed) *Black’s Law Dictionary* (9th edn, West: Thompson Reuters, 2009) p.154.

¹⁸ KJ Davey, ‘Local Autonomy and Independent Revenue’ in H P Faga, *op cit*, p.290.

and still remain accountable.’¹⁹Local government autonomy also means the freedom of the local government to recruit and manage its own staff, raise and manage its own finances, make bye-laws and policies, and discharge its functions as provided by law without interference from the higher governments.²⁰

On his part, Nwabueze posits that autonomy under a federal system means that, Each government enjoys a separate existence and independence from the control of the other government. Each government must not exist as an appendage of another government but as autonomous entity in the sense of being able to exercise its own will in the conduct of affairs free from the direction of another government.²¹

In this study however, autonomy in the local government means the ability of the local governments to manage local affairs within their areas of jurisdiction under the Constitution as tiers of government without unjustifiable encroachment by other tiers of governments. Autonomy in this inquiry denotes that local governments should be independent and stand on its own as tiers of government like the federal and states governments. Other levels of government can only interfere as provided in the Constitution especially when the local governments make bye-laws beyond their fields of competence.

Devolution is ‘when a national government gives power to a group or organization at a lower or more local level.’²²It is ‘the act or an instance of transferring one’s rights, duties, or powers to another; the passing of such rights, duties, or powers by transfer or succession.’²³

Faga, submits that by devolution, a central government transfers substantial authority for decision making, finance and management to quasi-autonomous local governments that are

¹⁹ UD Ikoni & Felicia Anyogu, *op cit*, p.151.

²⁰ Okechukwu I Eme, *et al*, ‘Local Government and Fiscal Autonomy for Local Government in Nigeria’ <<https://www.longdom.org/local-go...>>accessed on 18 January 2020.

²¹ BO Nwabueze, ‘The Presidential Constitution of Nigeria’ (1984) Vol 2, No 2, *Nigeria Journal of Public Administration and Local Government*, 24.

²² Evadne Adrian-Vallance and Karen Cleveland Marwick, (eds) *Longman Dictionary of Contemporary English*, *op cit*, p.464.

²³ Bryan A Garner, (ed) *Black’s Law Dictionary*, *op cit*, p.518.

accountable to their constituents.²⁴

In this study, devolution means the process by which government at the higher echelon (the central government) gives part of its powers and authority to government at the lower cadre (regional or local government) to govern local inhabitants under the confine of its area of jurisdiction. It is a sort of administrative decentralization. Thus, devolved provinces have the competence to make relevant laws on their areas.

Reform is ‘The improvement or amendment of what is wrong, corrupt, unsatisfactory, etc.’²⁵ John Egbe, sees reform as, ‘...purposeful change introduced to improve the capacity of a given organization to respond to change demands.’²⁶ Akaakuma, opines that, ‘Reform involves identifying an existing problem and attempting to solve it.’²⁷

In this study, there is anomaly in the local government affairs. There is no transparency in the councils’ election; there is no transparency in the impeachment of local government chairmen or their vice; councils do not get funds meant for them from the federation account directly; the Constitution is silent on tenure of local government elected officials and their qualifications. This work makes a clarion call for reformation of the councils’ affairs in the light of the above identified areas under the 1999 Constitution.

3. Local Government Autonomy under the 1999 Constitution of Nigeria: Analysis of Matters Arising Therefrom

It would be good to note at the onset that section 2 (2) of the Constitution provides for the constituents of Nigeria as follows; ‘Nigeria shall be a Federation consisting of States and a Federal Capital Territory.’²⁸ The local government was not cited in the above constitutional provision. The effect of the provision of section 2(2) of the Constitution above is that the framers of the 1999 Constitution did not intend to

²⁴ HP Faga, ‘Separation of Powers and Functions of Local Governments in Nigeria’s Constitutional Democracy: Ebonyi State as A Case Study’ (2009) Vol 5, No 1, *University of Ilorin Law Journal*, 275.

²⁵ <<https://en.m.wikipedia.org/wiki/>>accessed on 18 January 2020.

²⁶ Enyi John Egbe, ‘Native Authorities and Local Government Reforms in Nigeria Since 1914’ <<https://www.researchgate.net/2727...>>accessed on 17 January 2020.

²⁷ A Akaakuma, ‘Ethics and Accountability in Administration’ in Enyi John Egbe, ‘Native Authorities and Local Government Reforms in Nigeria Since 1914’, *op cit*.

²⁸ CRFN 1999.

make local government an independent and autonomous third tier government in the real sense. That is why the council was not mentioned while highlighting the governmental components of Nigeria. This lacuna in the Constitution has affected the autonomy of local government adversely. State government now hinge on it to handle the councils as their extension. Hence the council has no autonomy under the 1999 Constitution on the strength of the above provision. Again, section 4 (1) under Part 11 of the Constitution provides for the legislative powers of the Federal Republic of Nigeria thus; ‘The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.’ Section 4 (6) thereof provides for the legislative powers of the state thus; ‘The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.’ No mention was also made of the local government. Again, the framers of the Constitution failed to state the legislative powers of the councils in Part 11 of the 1999 Constitution because they wanted councils’ administration to be strictly state governments affairs as seen in section 7 (1) of the 1999 Constitution.

Section 7(1) of the Constitution²⁹ provides for the establishment of a democratically elected local government council. It is the legal backing for the existence of local governments in Nigeria. The said section 7(1) of the Constitution provides thus:

The system of local government by a democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.³⁰

3.1 Functions of Local Government

The functions of local government are provided in the Fourth Schedule to the Constitution.³¹ These functions are divided into two. The first limb is ideally the exclusive reserve of the local government while the second arm can be performed by the state and local government councils jointly.

²⁹ CFRN 1999.

³⁰ *Ibid* s. 7(1); the Supreme Court of Nigeria in its wisdom validated the provisions of section 7(1) of the Constitution above in *FRN v Solomon* (2018) 7NWLR (pt 1618) 201.

³¹ Fourth Schedule, CFRN 1999.

1. The main functions of the local government are as follows:
 - (i) The consideration and the making of recommendations to a state commission on economic planning or any similar body on: (a) The economic development of the state particularly in so far as the areas of authority of the council and of the state are affected, and (b) Proposals made by the said commission or body.
 - (ii) Collection of rates, radio and television licenses.
 - (iii) Establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm.
 - (iv) Licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts.
 - (v) Establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences.
 - (vi) Construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a state.
 - (vii) Naming of roads and streets and numbering of houses.
 - (viii) Provision and maintenance of public conveniences, sewages and refuse disposal.
 - (ix) Registration of all births, deaths and marriages.
 - (x) Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a state; and
 - (xi) Control and regulation of:
 - (a) Out-door advertising and hoarding.
 - (b) Movement and keeping of pets of all description.
 - (c) Shops and kiosks.
 - (d) Restaurants, bakeries and other places for sale of food to the public.
 - (e) Laundries; and
 - (f) Licensing, regulation and control of the sale of liquor.

2. The functions of a local government shall include participation of such council in the government of a state as respects the following matters:
 - (a) The provision and maintenance of primary, adult and vocational education.
 - (b) The development of agriculture and natural resources other than the exploitation of minerals.³²
 - (c) The provision and maintenance of health services; and
 - (d) Such other functions as may be conferred on a local government council by the House of Assembly of the state.³³

It need be reiterated again as emphasized earlier that with regards to the first arm of the functions of local government as listed in the Fourth Schedule to the Constitution, the local governments enjoy exclusive jurisdiction and the state

³² Exploitation of minerals fall within the exclusive jurisdiction of the Federal Government under s.44(3) CFRN 1999.

³³ Fourth Schedule, *ibid.*

government will be acting *ultra vires* should it encroach on those functions. Thus, in *Knight, Frank and Rutley v Attorney General Kano State*,³⁴ the Supreme Court held *inter alia* concerning those functions:

The (state) government acted *ultra vires* in entering into contract with the Appellants to do what only the local government councils concerned were entitled to do under the 1979 Constitution...Consequently, I hold that both the trial court and the court of Appeal were right in coming to the conclusion that the government had no power to award the contract and it acted *ultra vires* in doing so.³⁵

The effect of the above decision is that when there is a valid state law conferring jurisdiction on the councils with regards to the items specified in the 1st limb of the Fourth Schedule, the state government should not interfere in the exercise of those functions by the council.

In the same vein, the second limb of the functions of local government enumerated under section 2 of the Fourth Schedule to the Constitution is shared with the state. Thus, the state and local government have concurrent powers to legislate on those items being residual matters. The implication thereof is that where there is a conflict between state law and that of the local government bye-law on any of those specific matters, the state statute will prevail while the local government bye-law will be void to the extent of its inconsistency.³⁶ The provisions of the Fourth Schedule should be read together with section 7(1) of the Constitution and if that is done, it follows that local governments cannot act until the state government makes a law that will confer them jurisdiction to wade into those objects.³⁷ The Constitution should be amended so that the councils can assume jurisdiction over the items enumerated in the Fourth Schedule to the Constitution as a tier of government without recourse to state laws as currently obtains.

³⁴ (1998) 58 LRCN, 3707.

³⁵ *Ibid*, @ 3729.

³⁶ TR Ikpotor, 'Federalism and the Local Government System in Nigeria' (2014) *DELSU Readings in Law Journal*, 111.

³⁷ Various states in the federation have their laws on local government. For instance, there is Ebonyi State Local Government Law Cap 106, Laws of Ebonyi State of Nigeria 2009 on the councils. But notwithstanding the state laws, the states make law that will favour them and usurp the councils mode of raising revenue internally.

3.2 Local Government Elections

Under the 1999 Constitution both the Federal and State legislatures are empowered to make laws on local government elections provided that the laws made by the state government are not inconsistent with the federal laws.³⁸ Again, the Constitution guarantees and recognizes only democratically elected local government councils not caretaker committees or sole administrators.³⁹ To make the above mandate fruitful, the Constitution empowers the State Independent Electoral Commission (SIEC) to conduct elections into the local government councils; whereas the Independent National Electoral Commission (INEC) is obliged to compile voters register for purposes of such elections on the other hand.⁴⁰

Clearly, the constitutional provision on the conduct of the council's election is contradictory. How can the power to conduct election into the local government be given to two legislative bodies if local government is the function of the state as provided in section 7 and other parts of the Constitution? For the avoidance of doubt and to fully empower the state government to ensure the existence of a democratically elected local government under section 7(1) of the Constitution, section 7(4) of the Constitution⁴¹ provides thus : 'The Government of a State shall 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.' Similarly, the Second Schedule Part 1 of the Constitution which provides for the Exclusive Legislative List on the Legislative Powers of the federation has this to say in paragraph 22: 'Election to the offices of the President and Vice-President or Governor and Deputy Governor and any other office to which a person may be elected under this Constitution, excluding election to a local government council or any office in such council.' The implication of the foregoing is that the Constitution intends that local government election should be conducted wholly by the state government to the exclusion of the federal government.

The above constitutional provisions on local government election have given rise to avoidable delays and litigations on the conduct and outcome of local government elections. Thus, the court recognized the responsibility of INEC to compile voters register for elections into the local government when it held in *Chief Sule Balogun*

³⁸ This is provided in the Second Schedule Part 11 Para 11 and 12 CFRN 1999.

³⁹ Section 7(1), *ibid*.

⁴⁰ This is the provision of the Third Schedule Part 11 (B) Para 4(a) & Part 1(F) Para 15(e) CFRN 1999; Also Section 197 (1) (b).

⁴¹ CFRN 1999.

*& Ors v Attorney General of Lagos State & Ors*⁴² *inter alia* that the conduct of election by the Lagos state government using an invalid voters register was unconstitutional.⁴³ Similarly, in *Chief Gabriel A Akanro v Lagos State Electoral Commission*,⁴⁴ the plaintiff challenged the holding of local government elections in the state on the basis that the register of voters to be used was the register of voters compiled by the Federal Electoral Commission (FEDECO) in the 1977/1978 general elections in 1979. It was held *inter alia* that the law required the registration of voters to be carried out for every local government election on a date to be fixed by the state governor and that until such register has been prepared by the FEDECO, the Lagos State Electoral Commission (LASIEC) cannot lawfully hold, organize, undertake and conduct local government election. Consequently, the court declared the election null and void.

Associated to the foregoing is that though the role of the National Assembly over local government election is limited to making laws with respect to the registration of voters and the procedure regulating elections thereto, it has tended to go beyond its boundaries. For instance, in *Attorney General of Abia State & 35 Ors v Attorney General of the Federation*,⁴⁵ the National Assembly enacted the Electoral Act 2001 which purports to legislate on tenure of local government chairmen and councilors and to divide the local government into electoral wards. The Supreme Court in a considered ruling nullified the Act on the basis that the National Assembly had no such power so to do except for the FCT Abuja. Hence, the jurisdiction to legislate on the tenure of local government is constitutionally reserved for the states by virtue of Section 7(1) of the Constitution.⁴⁶

It is advised that conduct of local government election should be left to one level of government. There is no point or wisdom authorizing INEC to compile voters list or update same and empowering SIEC to conduct the election. Though a perusal of the constitutional provision on councils election would show that there is intention by the drafters of the Constitution for the state governments to do everything on local government election, experience shows that state governments over the years have simply hidden under their constitutional powers to handpick their party supporters and loyalists and plant them as chairpersons of the councils

⁴² (1981) 1 NCLR 31.

⁴³ A similar decision was handed down by the Court in the case of *Ajayi v Lagos State* (1981) NCLR 94.

⁴⁴ (1981) 1 NCLR, 51.

⁴⁵ (2002) 6 NWLR (pt 763) 264.

⁴⁶ The above is the view expressed in the case of *FRN v Solomon* (*supra*).

in the guise of election. What is more, the state governments appoint the chairman of SIEC and give him the names of those he would declare the winner even before elections into the councils are conducted.

Again, section 7(1) of the 1999 Constitution provides for a democratically elected local government council. However, interpreting section 7(1) of the 1979 Constitution⁴⁷ which provides for a democratically elected local government council, the court had this to say in *Akan v Attorney General of Cross Rivers State*,⁴⁸

This section is firstly a declaration by the constitution of a system of local government by means of democratically elected local government councils and secondly, a mandate or order to the government of every state to ensure that such councils are established under a law. This is a compulsory non- discretionary obligation. No state government can act in this respect under a law that does not provide for councils that are democratically constituted, or rather constituted by means of democratic election.

Sadly, in practice notwithstanding the above decision, the application of Section 7 (1) of the Constitution is observed more in abuses and breaches by state governments through establishment of caretaker committees in the council. For example, the states have constantly removed and dissolved elected local government officials. They had also promulgated laws which authorized them to appoint Caretaker Committee or Administrators into the local government councils rather than elected officials as envisaged and directed in the Constitution.⁴⁹ There are legion of cases that support the above assertion. Thus, in *Amodu v Governor of Oyo State*⁵⁰ and in *Umar v Governor of Kaduna State*,⁵¹ a local Government Law which provided for the composition of a Local Government Council by nominated rather than elected members, was held *ultra vires* the Constitution of 1979 whose operative terms are on all fours with the present 1999 Constitutional provision on the issue. Similarly, in *Adenij-Adele v Governor of Lagos State*,⁵² a Local Government Law which provided for the appointment of members of the

⁴⁷ Section 7(1) of the 1979 Constitution is the same thing with Section 7(1) of the 1999 Constitution.

⁴⁸ (1982) 3 NCLR 881; also *Balogun v Attorney General of Lagos State* (1984) 5 NCLR 447.

⁴⁹ Section 7 (1) CFRN 1999.

⁵⁰ (1982) 4 NCLR 426.

⁵¹ (1981) 2 NCLR 689 @ 699.

⁵² (1982) NCLR 698.

management committee by the Governor was held to be in direct conflict with section 7 (1) of the Constitution and thus void *ab initio*.⁵³

In the FCT⁵⁴, Abuja the Area Councils enjoy considerable autonomy in many respects. The Electoral Act 2010, made elaborate provisions on the conduct of elections in the area councils. For instance, INEC conducts election into the offices of the chairman, vice chairman and members of the area council.⁵⁵ The Act also provides for qualification and disqualification of members of the area councils.⁵⁶ There should be equivalent provision in the Constitution on the councils in the various states in the federation. It is our submission that there will be transparency in the conduct of election into the council if INEC is empowered to do so as obtains in the FCT.

3.3. Issue of Impeachment Control of the Local Government by the State House of Assembly

Flowing from the control of the local government council's election largely by the States and remotely by the Federal Government is the fact of impeachment control of the local government council by the State Houses of Assembly. This is yet another encroachment on local government autonomy.

To be noted by way of reminder is that the Constitution confers on the state government the powers to make laws to ensure the existence of a democratically elected local government council in Nigeria.⁵⁷ In practice most states make laws which permit them to sanction the impeachment of executive officers of the local government before it becomes valid. It is sad that a legally constituted Local Government Legislative Council cannot successfully impeach the executive officers of the council for misconduct without interference and recourse to the State Houses of Assembly for ratification and validation. For instance, in Ebonyi State, Section 14 of the Local Government Law of Ebonyi State⁵⁸ provides thus:

⁵³ Similar incident obtained in *Adegbe v The Speaker, Kogi State House of Assembly & Ors*, (2006) NNLR 244; *Akpan v Umah*, (2002) 7 NWLR (pt 767) 701 and *Onusagba v Kogi State Government*, (2002) NNLR 691 @ 696.

⁵⁴ Federal Capital Territory.

⁵⁵ Ss 103 and 111 of the Electoral Act 2010.

⁵⁶ Ss 106 and 107, *ibid*.

⁵⁷ Section 7(1) CFRN 1999; also the cases of *FRN v Solomon* (2018) 7 NWLR (pt 1618) 201 and *Akan v Attorney General of Cross Rivers State* (1982) 3 NCLR 881 support the above Constitutional provision.

⁵⁸ Section 14 Local Government Law Cap 106 Laws of Ebonyi State of Nigeria 2009.

The Chairman or Vice Chairman of a Local Government Council in Ebonyi State may be removed from the office for misconduct or other offences in accordance with the provisions of this Law whenever a notice of any allegation in writing signed by not less than one-half of the councilors stating that the Chairman or Vice Chairman is guilty of misconduct in the performance of the functions of his office.⁵⁹ And therefore, the legislative council shall after due debate resolve the issue by motion passed and supported by the votes of not less than two-thirds majority of all the members of the legislative council, who shall append their signatures to the resolution, and the clerk of the legislative council, will therefore communicate the resolution of the legislative council, the notice of allegations and any reply thereof, to the clerk of Ebonyi State House of Assembly who will now present it to the House.⁶⁰ The House of Assembly shall after due debate on the resolution decide to ratify the resolution by a two-thirds majority of its members present and voting and the Chairman or Vice Chairman shall stand removed from office. Where the House does not ratify the resolution, no further proceedings shall be taken in respect of the matter.⁶¹

Similarly, and more worrisome, section 14 (vii) of the law provides *inter alia* thus: 'Notwithstanding the provisions of subsection (i) to (vi) of this section, the Governor may suspend any Chairman or Vice Chairman or dissolve any Local Government Council following the resolution of the State House of Assembly.'

The Ebonyi State Local Government Laws partly reproduced above is in *pari materia* with local government laws in most states of the federation. The effect thereof is that the local government legislative council is a toothless bulldog. Thus, it can only bark and thereafter retire to its shell like tortoise and snail as it lacks the competence to implement its bye-laws with regards to impeachment of its executives. Further, the state government treats the resolutions and decisions of the local government legislative council with great contempt and derision. Hence state governments do not see local government as a tier of government in the country. The Supreme Court of Nigeria in affirming the dependency status of the local

⁵⁹ Section 14 (ii), *ibid*.

⁶⁰ Section 14 (v), *ibid*.

⁶¹ Section 14 (vi), *op cit*.

governments on the state governments stressed in *Chief Balogun v Attorney General of Lagos State* among other things that the Nigerian federal government has no constitutional legislative powers with respect to the establishment, structure, composition, finance and functions of local government councils, rather it is the state governments that are bestowed with such powers under the Constitution.⁶²

In the FCT, Abuja the Electoral Act regulates what happens when the chairman elect dies before taking oath of office including removal of chairman or his vice by normal impeachment and vacation of office.⁶³ There is no provision in the Act empowering the President to remove elected area council chairman or his vice as obtains in the various states of the federation. The time is ripe to make the councils independent from the state governments' control.

3.4 Tenure of Local Government Elected Officials

The Constitution which provides a four year term for state and federal government elected officials is silent on the tenure of local government elected officials.⁶⁴ This lacuna in the Constitution makes state governments to fix any term they want including reducing the term of office of the elected council before their expiration.

The local government tenure palaver was part of what the National Assembly wanted to curb but for the intervention of the Supreme Court where the state governments felt that the Federal Government usurped their powers and sued the latter in *Attorney General of Abia State & 35 Ors v Attorney General of the Federation*.⁶⁵ In the case the National Assembly enacted the Electoral Act 2001 which purports to legislate on tenure of local government chairmen and councilors and to divide the local government into electoral wards. The Supreme Court in a considered ruling nullified the Act on the basis that the National Assembly had no such power so to do except for the FCT Abuja. Hence, the jurisdiction to legislate on the tenure of local government is constitutionally reserved for the states by virtue of Section 7(1) of the Constitution.⁶⁶

Specifically, however, the Court had this to say on the tenure of the local government elected officials:

⁶² *Chief Balogun v Attorney General of Lagos State* (1981) 1 NCLR 31.

⁶³ Ss 112, 114 and 115 of the Electoral Act 2010.

⁶⁴ Sections 135(2) & 180(2) CFRN 1999.

⁶⁵ *supra*

⁶⁶ The above is the view expressed in the case of *FRN v Solomon (supra)*.

True enough, section 7(1) of the Constitution which empowers the state government to provide for the establishment, structure, composition, finance and functions of local government councils in the state is silent on the tenure of elective offices in these councils. By the silence, the matter becomes residual as it is not on the Exclusive Legislative List. By virtue of Section 4 (7) (a) residual matters are for the state, not the federal, to legislate upon. It follows that the tenure of elective offices in a Local Government Council is a matter for the House of Assembly of a State and not the National Assembly to legislate on.⁶⁷

In the FCT Abuja, the Act provides three (3) years as tenure of area councils elected officials including provision for recall of members.⁶⁸ The Constitution should be amended to make equivalent provisions for the councils in the federation.

3.5 Financial Control of Local Government by the State

Local governments in Nigeria have three main sources of funds. They are: (a) statutory allocations from the Federal Government, (b) statutory allocations from the state's coffers and (c) monies accruing to the local government from its internally generated revenue.⁶⁹

Under section 7(6) (a) & (b) of the 1999 Constitution, the National Assembly and the State House of Assembly shall make provision for the statutory allocation of public revenue to local government councils in the federation and that within the state.

Generally, the 1999 Constitution under section 162 thereof made copious provision on revenue of the Federal Republic of Nigeria as a country. The said section made a specific pronouncement on how the amount standing to the credit of the federal, state and local government councils shall be respectively shared and dispersed. Unfortunately, the Constitution gave vast powers to the State and Federal Governments over the amounts meant for and standing to the credit of the local government councils. Specifically, however, the Constitution has this to say on funding of local government councils. Section 162(3) thereof provides thus:

⁶⁷ *Attorney General of Abia State & 35 Ors v Attorney General of the Federation(supra)*

⁶⁸ Ss 113 and 116, Electoral Act 2010.

⁶⁹ S.162(3)(5)(7) CFRN 1999.

Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local government councils in each state in such manner as may be prescribed by the National Assembly.⁷⁰

Similarly, the Constitution under section 162 (5) has this to say on local government councils:

The amount standing to the credit of the local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be prescribed by the National Assembly.⁷¹

Going further, section 162(6) of the Constitution provides thus:

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.⁷²

Section 162(6) above is antithetical to the principle of federalism and facilitates the continuous desire of the state executives to control the affairs of the local governments within their jurisdiction. Commenting on the effect of the constitutional provisions above, Ikoni and Anyogu submit that the provision allows the states unlimited access to and unrestrained control over local government funds.⁷³ To give effect and meaning to section 162 (6) of the Constitution above, various states have their respective laws on State Joint Local Government Account.⁷⁴

Notwithstanding the provisions of the state laws on the councils’ funds, the laws are not being followed. In practice, when the Federal Government releases local

⁷⁰ S.162(3), CFRN 1999.

⁷¹ S.162(5), *op cit*.

⁷² S.162(6), *ibid*.

⁷³ UD Ikoni and Felicia Anyogu, ‘The Jurisprudence of Local Government Administration and the Challenges of Rural Development: The Nigerian Experience’ (2014) Vol 3, *EBSU Journal of International and Juridical Review*, 152.

⁷⁴ In Ebonyii State, there is Ebonyi State Revenue Distribution to Local Government Councils and Development Areas Law 2009. The law provides for and regulates the formula for disbursement of funds to various local government councils in the state.

government funds to the states for disbursement to their councils, the state governor will summon the council chairmen and give them any amount the governors please that can only offset the council's indebtedness⁷⁵ and nothing more. This is because the local government chairmen are handpicked and planted on the seats by the governors. Challenging the governors meant risking their office.

Sub section 5 above was given a lucid interpretation by the Supreme Court in *Attorney General of Ogun State v Attorney General of the Federation*,⁷⁶ to mean that section 3 of the Allocation of Revenue (Federation Account) Act 1990, as amended by Decree No 106 of 1992, in so far as it purported to regulate the allocation of any amount standing to the credit of the Local Governments in the Federation Account directly to the Local Government Councils is inconsistent with section 162(5) of the constitution and therefore void. The wording of Section 162(3) of the Constitution clearly recognizes the local government councils as a third tier of government worthy to partake in the distribution of the amount standing to the credit of the federation account. One wonders the wisdom behind the subsequent provisions of subsections 5 and 6 of the Constitution above.

It is obvious that the financial control of local government is constitutional by the provision of subsections 5 and 6 of section 162 of the 1999 Constitution above. With this state of affairs, the question that begs for answer is: why can't funds meant for the local government councils from the federation account be allocated directly to them? The effect of the SJLGA is that state governments simply hijack the funds accruing to the local government councils from the federation account on monthly basis.

The federal government sometimes interferes in local government issues by withholding local governments' funds. The unconstitutionality of this act was declared by the Supreme Court in the case of *Attorney General of Lagos State v Attorney General of the Federation*,⁷⁷ where the court held *inter alia* that the president has no power vested in him to suspend or withhold the statutory allocation due and payable to Lagos state for the benefit of the local governments, pursuant to the provision of section 162(5) of the Constitution.⁷⁸

⁷⁵ This is especially for councils that pay its staff.

⁷⁶ (2002) 18 NWLR (pt 798) 232, 344.

⁷⁷ (2004) 11-12 SC 83; also *Attorney General of Ogun State v Attorney General of the Federation* (2003) WRN 100.

⁷⁸ CFRN 1999.

Again, it should be pointed out that the 1999 Constitution did not provide for accountability of state government officials over local government funds. Owing to the status of local government councils they may not effectively probe into the details of funds allocated to them. Thus, this loophole prompted the Federal Revenue Mobilization Allocation and Fiscal Commission (FRMAFC) to commence in early 2004 the publication of details of the disbursement of funds to states for the benefit of their local governments. In effect, the National Assembly passed into law the Monitoring of Revenue Allocation to Local Government Act 2005.⁷⁹ The promulgation and emergence of the Act raised some constitutional questions which were submitted to the Supreme Court of Nigeria for determination in *Attorney General of Abia State & 2 Ors. v Attorney General of the Federation & Ors.*,⁸⁰ in terms of whether the Federal Government and the National Assembly have power under the Constitution to monitor local government councils' funds or legislate on disbursement of funds to local governments. It was held *inter alia* that the Federal Government had no power to monitor local government councils' funds and that the National Assembly lacked the competence to legislate on the modalities of such allocations. It was further held that the powers of the National Assembly over funds accruable to the local government councils in Nigeria under sections 7(6) and 162(5) of the 1999 Constitution are only limited to allocation of such funds and it does not extend to monitoring such funds. Monitoring is a post allocation matter and the National Assembly had no competence to make such laws. Therefore, the Monitoring of Revenue Allocation to Local Government Act which sought to monitor the revenue allocation to the local government councils was held to be unconstitutional.

It follows that the Federal Government cannot allocate funds directly to local government councils without first amending section 162(5) (6) & (8) of the Constitution. Any attempt to do that will be void in the light of the decision of the Supreme Court in the above case. However, this is the position before the emergence of the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices and other Related Offences Commission (ICPC). EFCC and ICPC and other anti-graft agencies which now readily probe into corrupt practices in the states and local government councils.

In the same vein, apart from the preceding subsections, subsections (7) and (8) impede on local government financial autonomy. Subsection (7) provides thus:

⁷⁹ See Government Notice No 151, Federal Republic of Nigeria Official Gazette No 78 Vol 92.

⁸⁰ (2006) 7 SCNJ, 1.

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.

Also, subsection (8) of section 162 adds thus:

The amount standing to the credit of 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.

Again, this section empowers the state to determine the sharing formula of the amount standing to the credit of the councils in the state. This subsection is unnecessary as it further affects and weighs down the local government autonomy.

4. Conclusion and Recommendations

We have thus far looked into the meaning of local government and other relevant terms and evaluated the local government system under the 1999 Constitution of Nigeria and under the Electoral Act 2010. It is clear that local government under the 1999 Constitution has no iota of autonomy amidst the control which the state governments exercise over them. The states manage the councils' affairs, control the elections and finances of the council including impeachment of local government elected officials. It is our submission that local government autonomy under the 1999 Constitution of Nigeria is a myth and not real.

This study recommends that the 1999 Constitution of Nigeria be amended in order to grant local government full autonomy so that the councils can manage their affairs as a tier of government as follows:

1. Section 7(1) thereof be amended so that elections to local government will be conducted by INEC and issues of councils' affairs taken away from the state.
2. Section 162(6) should be amended by removing the provision for State Joint Local Government Account so that the amount standing to the credit of the councils shall be paid to them directly from the federation account. Similarly, section 162 (8) thereof should be expunged from the Constitution.
3. There should be a provision on the tenure of local government elected officials. A minimum four year term and a maximum eight year term are recommended.
4. There should also be provision on qualifications and disqualification of local government elected officials.