

LOCAL GOVERNMENT AUTONOMY AND FEDERALISM IN NIGERIA: RESOLVING THE TRIPARTITE POWER-SHARING CONUNDRUM THROUGH THE JUDICIARY*

Abstract

This paper examines the nature of power-sharing in Nigeria's federalism, its impact and inherent defects or contradictions in the administration of Local Government. The debate over Local Government autonomy within Nigeria's federal structure remains a pivotal issue in the discourse on federalism. It took a decisive turn with the Supreme Court's decisions directing the payment of revenue allocation directly to Local Government from the Federation Account. Nigeria's federal system embodies a web of Federal, State and Local Government inter-government relations. While the status of the Federal and State Governments is firmly entrenched, Local Governments have remained emasculated and subjected to the control of the states. Using the analytical research methodology, the paper constructively analyses power-sharing between the federal and sub-national governments. It reviews the legal and political framework for Local Government that has remained topical. Through analysis of constitutional and statutory provisions, review of judicial decisions on Local Government and the undercurrents underpinning the dynamics of the control exerted by the states over Local Government, it will ascertain the challenges for Local Government autonomy, which include financial dependence and undue interference from the state/federal government, constitutional ambiguities on the status and power of Local Government resulting in intergovernmental conflicts. In preferring actionable remedies, the paper advocated for constitutional reforms to specifically delineate the status and responsibilities of local government within the federal order, political and fiscal autonomy and a credible mechanism for conducting local government elections. It concludes that local government, as the pivot of grassroots development, should be integrated as an autonomous political entity in a tripartite power-sharing, free from the manipulation of the states.

Keywords: Autonomy, Decentralisation, Federalism, Local Government, Power-Sharing

1. Introduction

A prominent feature of Nigeria's political system from the colonial era is the practice of federalism.¹The discussions of federalism are intensely woven around the division of governmental powers of a country between a central government and component federating units. Fundamentally, what generally distinguishes a federal system is the division of powers between the different levels of government. Many have questioned whether federalism serves any utilitarian purpose other than the division of power between the federal government and the states. Generally, federalism is designed to hold different ethnic or religious entities together in a state while allowing each of them a degree of autonomy in their locality.²

Nigeria is a plural society of over two hundred and fifty (250) ethnic nationalities,³further reinforced by a mixture of Christianity, Islam, and other indigenous beliefs. With palpable fears, particularly by

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¹CE Madubuegwu and CA Maduekwe, 'Federalism and Power-Sharing in Nigeria: A Theoretical Analysis.' [2022] 6(5) *IJLPSA*, 14.

²E Okpanachi and A Garba, 'Federalism and Constitutional Change in Nigeria.' [2010] *FG*, 7(1), 1, 3; D Babalola, 'The Origins of Nigerian Federalism: The Rikerian Theory and Beyond.' [2013] *FG*, 8(3), 43-54.

³CE Madubuegwu and CA Maduekwe, 'Federalism and Power-Sharing in Nigeria: A Theoretical Analysis.' [2022] 6(5) *IJLPSA*, 14, 14-15.

the minority groups, that the majority would dominate them, federalism was adopted to grant the various nationalities some degree of autonomy. The adoption of a federal structure was popularly acknowledged as the solution that unites the separate ethnic nationalities within an all-encompassing national system in a way that allows each of the federating entities to maintain its autonomy and development.⁴ According to McLean and McMillan, federalism employed to ‘denote an organisational principle of a political system, emphasising both vertical power-sharing across different levels of governance (centre-region) and, at the same time, the integration of different territorial and socio-economical units, cultural and ethnic groups in one single polity.’⁵ Federalism typifies a system of government in which a country is controlled by two levels of government:⁶ a national (or central) government and the federating units within a nation’s boundaries, commonly referred to as states. It outlines the division of governmental powers and financial relationships between different governmental levels in a written constitution.⁷ Both the national government and the federating units have the power to make laws and have a certain level of autonomy.⁸ The division of power is formally established and entrenched in a written constitution that binds all the levels of government, and neither federal nor federating unit can unilaterally alter it.

This classical framework of federalism is a dual system, symbolised by a two-tier structure, each level having its set of powers and responsibilities, with clear boundaries to avoid overlap.⁹ It must be said that there is no single ideal or one-size-fits-all framework or model of federalism.¹⁰ As a result, the federal setting differs due to distinct political peculiarities rooted in historical paths or economic circumstances in federal countries. Therefore, the federal structure of a country is defined by its unique colonial legacy and historical antecedents, ethnic diversity and political challenges. These local peculiarities dictate certain modifications seen in different federal systems, with multi-level power distribution, intergovernmental relations and the modalities in which financial resources are allocated.

In recognition of local peculiarities as determinants of power distribution, the Supreme Court, in *Olafisoye v FRN*,¹¹ held that federal structure must reflect what the constitution provides, as federalism conveys different meanings in different constitutions. After gaining independence, Nigeria’s federalism has been marked by incremental transformation through constitutional reforms. The initiative enunciated in the 1976 local government reforms¹² marked the beginning of the mutation of federalism, with the 1979 Constitution¹³ and, later, the 1999 Constitution¹⁴ recognising a third tier of government

⁴PS Christopher and O Obari, ‘Federalism in Nigeria: Evolution, Development and Practice.’ [2021] IJAMSR, (5)6, 19-26.

⁵I McLean, and A McMillan (eds), *The Concise Oxford Dictionary of Politics* (2nd edn, Oxford University Press, Oxford, 2003) 194.

⁶R Davis and DJ Burnham, ‘The Role of the Federal Judiciary in the Development of Federalism in West Germany and the United States.’ [1989], BCICLR, 12(1), 63; C Saunders, *The Division of Powers in Federations* [International IDEA Constitution Brief, 2019] 1

⁷C Saunders, *Courts in Federal Countries* [International IDEA Constitution Brief, 2019] 2

⁸*KSIEC v PDP* [2005] 6 NWLR (Pt. 920) 25 at 50.

⁹A Majekodunmi, ‘Federalism in Nigeria: The Past, Current Peril and Future Hopes.’ [2015] 9(2 *JPDS*), 107, 109.

¹⁰G Anderson, *Federalism: An Introduction* (Oxford University Press, Ontario, 2008) 2.

¹¹[2004] 4 NWLR (864) 580, 647, 649.

¹²D Olowu and SB Ayo, ‘Local Government and Community Development in Nigeria: Developments Since The 1976 Local Government Reform.’ [1985] CDL 20(4), 283-292; BC Smith, ‘The New System of Local Government in Nigeria - Background to Reform.’ [1983] LGS, 9(2), 51-71.

¹³A Gboyega, ‘Intergovernmental Relations in Nigeria: Local Government and the 1979 Nigerian Constitution.’ [1981] PAD, 1(4), 281-290.

¹⁴Section 7.

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in addition to the federal and state levels.¹⁵ Therefore, the trilateral model expands the federal structure consisting of the federal, state, and local governments¹⁶ with powers enshrined in the constitution or other relevant legislations.¹⁷ Therefore, the federal constitution in Nigeria is a product of its history, reflecting its socio-political experiences. The logic of the constitutional division of powers is to build a unified federation that does not suffocate component units while keeping the socio-ethnic complexities of the nation together. Tripartite power-sharing presents opportunities and challenges for the country's federal system. While this tripartite model gives adequate allowance for decentralisation, its practicability is limited by the inadequacy of local government autonomy and fiscal dependency. The paper will now examine the challenges and prospects of the tripartite power-sharing arrangements in Nigeria.

2. Nature of Tripartite Power Sharing in the Nigerian Federation

The Constitution of the Federal Republic of Nigeria 1999 (as amended) proclaims Nigeria as a federation of states and a Federal Capital Territory.¹⁸ The state has been held to mean all three tiers of government - the Federal Government, State Government and Local Government.¹⁹ The Supreme Court affirmed in *A.-G., Kaduna State v Hassan*,²⁰ that the provisions of the Nigerian Constitution are unique and only intended to deal with the peculiar circumstances of Nigeria. Thus, although the constitutional framework embodies federalist ideals, it encapsulates a hybrid trilateral power and revenue-sharing formula among three distinct tiers: federal, state, and local.²¹ Going by the constitutionally-enabled federal structure, the tripartite power-sharing recognised local governments as the third tier of government after the federal and state governments. Under the trilateral structure, the federal government's responsibility typically covers national importance such as defence, foreign affairs, banking, citizenship, currency, and maritime (ports).²² It establishes the underlying legal and policy framework under which state and local governments operate. The states are responsible for social services and infrastructure projects to improve living conditions and promote the security and welfare of citizens within the state boundaries, such as health, education, and infrastructure (such as roads).²³ The states also superintend local governments in their jurisdiction, including initiating the creation and overseeing through law of their composition, functions and funding.

Local governments have a constitutional status and have elected councils that are supposed to operate autonomously, though this autonomy is often limited in practice. As the third tier of government, their

¹⁵EI Amah, 'Devolution of Power to Local Government: Appraising Local Government Autonomy under Nigerian Federation.' [2018] BLR, 9, 275,276; GI Sheriff, IB Farouk and IB Aliyu, 'Challenges of Democracy in Nigerian Local Government System: A Critical Analysis.' [2021] JARMS 1(1), 118, 119.

¹⁶IC Chidozie, AG Usiagu and SP Okah, 'A Systematic Review of the Challenges of Local Government Administration in the Development of Rural Communities in Ezza-North LGA, Ebonyi State, Nigeria.' [2020] (10) *IJIRD* 9, 131, 132.

¹⁷*Knight, Frank & Rutley (Nig) v A.-G., Kano State* (1990) LPELR-14409(CA) 10-12.

¹⁸1999 Constitution, Section 2(2).

¹⁹*A.-G., Lagos State v A.-G., Federation* [2003] 12 NWLR (Pt. 833) 1, 164-165; *A.-G., Ondo State v A.-G. of the Federation* (2002) 9 NWLR (Pt. 772) 222, 306-307.

²⁰[1985] 2 NWLR (Pt.8) 483.

²¹1999 Constitution, Sections 2(2) 3(6), 163; *Taraba State Government v Shaku* (2019) LPELR-48130(CA) 55-60, paras C-B.

²²Functions as contained in the Exclusive Legislative List, set out in Part I of the Second Schedule to the 1999 Constitution and any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to 1999 Constitution to the extent so prescribed

²³Mainly any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to 1999 Constitution or any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to 1999 Constitution to the extent so prescribed.

mandates include carrying out projects that impact local communities, such as the provision of infrastructure (local roads and drainages) and services like waste management, primary education (schools), and healthcare (health centres). According to Ekpo and Ndebbio, local governments in federal systems like Nigeria may impact their jurisdiction's political and socioeconomic development due to their proximity to the local population.²⁴

The tripartite power-sharing framework is pivotal for effecting decentralisation of power. This approach improves government responsiveness to the needs of various regions and ethnic groups constituting the Nigerian Federation. Through tripartite power-sharing, the local governments effectively promote balanced development and reduce feelings of marginalisation from some sections of the federation. However, the tripartite power-sharing model introduces some complexity with an additional third tier of government that bothers local governments' legal status, powers, degree of autonomy, and functions.²⁵

3. Meaning and Purpose of Local Government

There is the contention that no political system can effectively exercise governance successfully from the centre without distributing powers and responsibilities through decentralisation²⁶ to subordinate levels of government at the grassroots level.²⁷ Local government refers to the administrative unit governing a specific area. It operates at the grassroots level, directly engaging with the local population.²⁸ The primary role of local government is to manage and administer public services and amenities within its jurisdiction and ensure that the community's unique needs are met through localised decision-making. Local governments promote democratic participation, drive economic development at the grassroots level, and serve as the essential link between the central government and the local population.

The literature on Local Government points to Local Government as the lowest level of government. It is regarded in theory and practice as a political entity set up by a national or regional (state) government. It entails the division of the country into smaller units, which act as subordinate authorities to provide governance at the grassroots level through their elected representatives. Local governments are usually created to exercise socio-economic and political functions within a restricted area of jurisdiction according to the law establishing them.

In Nigeria, the evolution of local government could be traced to the colonial era, when it functioned under the indirect rule system of the British colonial authority in collecting taxes and maintaining law and order. In attempts to strengthen the local government administration, reforms were initiated and implemented by different administrations (both civil and military) to varying stages of the nation's socio-political development, leading to changes in status, structure, composition and functions. Notably, the 1976 comprehensive reform and subsequent reforms strengthened the position of local government administration nationwide to provide governance at the grassroots level and respond to socio-economic

²⁴AH Ekpo and JEU Ndebbio, 'Local Government Fiscal Operations in Nigeria.' AERC Research Paper 73, 1.

²⁵OO Ogunnubi, 'Decentralisation and Local Governance in Nigeria: Issues, Challenges and Prospects.' [2022] CJLG 27, 5-16; JM Etebom and JH Wijaya, 'The Historical Development of Local Government Administration and its Contemporary Realities in Nigeria.' [2022] JSG 3(1) 43,

²⁶DO Adeyemo, 'Local Government Autonomy in Nigeria: A Historical Perspective.' [2005] JSS 10(2), 77.

²⁷IC Chidozie, AG Usiagu and SP Okah, (n 16)133

²⁸J Kyenge, 'The Challenges of Local Government Administration in Nigeria.' [2013] JMCG 5(1), 70, 71.

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development challenges.²⁹ The 1976 reform marked a turnaround in the evolution of Local Government in Nigeria.³⁰ The reform, according to Ayanwale, “effected a fundamental change in the development of local government in Nigeria.”³¹ It introduced the unified structure across the federation that remains to date, replacing the different structures previously existing in the various states.³² The reform, in particular, was designed to elevate local government to the third tier of government within the federal structure, introduced significant changes, particularly in the administrative setup, and codified Local Government's functions, finances and operations. The administration of the local government was vested in the local councils, democratically elected. These changes were later enshrined in the 1979 and 1999 Constitutions.³³ As the third tier, Local Government gets statutory allocation from the Federation Account, consequent on its constitutionally assigned powers and functions. Though the 1999 Constitution guaranteed the existence of democratic local government and provided for its powers and functions, its existence and functions were to be provided for in a law enacted by the state government. The absence of constitutional provisions on the powers, structure, composition (including the conduct of elections), finance and functions provided the window for the state governments to interfere with local government operations. The implication is that despite the elevation of local government to the functional status as the third tier of government in the country and its recognition by the 1999 Constitution, the democratic system of local government constitutionally guaranteed is handicapped to function effectively as expected due to inadequate political or structural and financial autonomy.

4. Impediments to Local Government Autonomy and Prospects

The administration of Local Governments in Nigeria faces major challenges that impede their ability to function as expected. These challenges limit their ability to fulfil their mandate of grassroots development as the third tier of government. The challenge stems mainly from constitutional ambiguities that leave the status and powers of local governments unclear and open to the control and manipulation of state government. The problem is compounded by the legal framework, which subjects funds from federal allocations intended for local government to state government oversight, thereby reducing local government's ability to operate independently.³⁴ Furthermore, excessive political meddling by state governments result in the dissolution of democratically elected local government councils and the non-conduct of local government elections by many state governments result in the appointment of caretaker committees.³⁵ These activities diminish local governments' autonomy and limit their capacity to carry out the functions outlined in the constitution. The paper will delve into these

²⁹EC Chitor and SI Odoziobodo, ‘The 1976 Local Government Reform and Effective Service Delivery in the Local Government System in Nigeria, 2000 - 2018: An Appraisal.’ [2022] CJSSH, (3)1, 1-11.

³⁰MOI Nwabuoku and PI Gasiokwu, ‘Legal Perspectives Appurtenant to Local Government Reforms in Nigeria and Switzerland.’ [2023] JLERI, 26(1), 1-16; JM Etebom and JH Wijaya, ‘The Historical Development of Local Government Administration and its Contemporary Realities in Nigeria.’ [2022] JSG 3(1) 43, 47.

³¹AB Ayanwale, ‘Local Government Investments in Agriculture and Rural Development in Osun State of Nigeria.’ [2004] JSS 9(2), 85, 86.

³²According to Agbodike et. al., the 1976 Reforms “brought among other innovations, democratically elected local government system, uniform structure, regular allocation of funds and functions enshrined in the constitution.” - FC Agbodike, CJ Igbokwe-Ibeto and BC Nkah, ‘Local Government Administration and the Challenges of Sustainable Development in Nigeria.’ [2014] RPAM 3(6), 95, 99

³³A constitutional creation, prescribed in the First Schedule, Part 1 of the 1999 Constitution.

³⁴D Eseaga, ‘Breaking: Supreme Court Orders Direct Payments to LGs from Federation Account.’ <<https://techeconomy.ng/breaking-supreme-court-orders-direct-payments-to-lgs-from-federation-account/>> accessed 18 August 2024.

³⁵As at July 2024, 20 states are under the administration of caretaker committees put in place by their respective governors as against the provision of the 1999 constitution which guarantees the operation of local government by democratically elected officials - <<https://thenationonlineng.net/full-list-20-states-wih-local-government-caretaker-committees/>> accessed 18 August 2024.

issues, highlighting their influence on local governance and offering potential solutions to enhance the effectiveness and independence of Nigeria's local government administration.

4.1 Constitutional Constraints

The legal framework governing local governments is fraught with ambiguities that contribute to the emasculation of local government. The 1999 Constitution guaranteed a system of local government by democratically elected local government councils. However, this recognition is superfluous as it placed Local Government directly under the control of state governments. Unlike the clearly defined roles of the federal and state governments, local governments operate under a framework that leaves their powers and functions subject to state control. Specifically, the Constitution mandates that state governments ensure the existence of local government councils under a law which provides for the establishment, structure, composition, finance and functions of such councils. The implication is that the Constitution vests on the State, in absolute terms, the powers to regulate local government under a law.³⁶

This provision recognises that the state government has the authority to establish local government councils and to specify their composition, structure, and functions. This ambiguous form in which the constitution provides for local government creates a subservient relationship where local governments are subject to the state's control. Nwabueze argued that there are no constitutional constraints on the powers of the state government to prescribe the structure and composition of Local Government.³⁷ For instance, the constitution did not establish the executive offices (Chairman, Vice Chairman and Supervisors) and legislative powers of local government (including the composition of the local legislature), qualifications and conduct of elections, tenure of office, and procedure for removal of office holders as provided for the federal and state levels. The offices for leadership of the local government, qualifications to contest these offices and tenure are not stipulated by the constitution but exist only in a law of the state government. Other important functionaries, such as Secretaries to the Local Government, Heads of Department, Treasurer, Auditor, etc., are appointed by the State Government through the Local Government Service Commission.³⁸

The Local Government is further decimated in the manner in which new local governments are created. While it is within the constitutional purview of state governments to initiate the creation of local government, these creations require the ratification of the National Assembly for these creations to be valid. The refusal of the federal government to approve the creation of new local governments has led to political standoffs, especially between Lagos State and the Federal Government, on the legitimacy of the created council.³⁹ The resulting disputes at the Supreme Court resulted in the declaration that any local government created by the states are inchoate until the necessary steps, as provided by the Constitution, are taken by the National Assembly.⁴⁰

³⁶EI Amah (n 15) 283

³⁷B Nwabueze, 'The Position of Local Government under the 1979 and 1999 Constitution.' *Guardian* Newspaper 18th April 2002 pp. 8-9 and 19th April 2002 p. 8

³⁸<https://www.ekitistate.gov.ng/executive-council/mdas/local-government-service-commission> accessed 18 August 2024. E Nwankwo, 'A Literature Review on Whether the Notion that LGAs have Autonomy in Nigeria is a Myth or Fact.' - <https://www.thecable.ng/a-literature-review-on-whether-the-notion-that-lgas-have-autonomy-in-nigeria-is-a-myth-or-fact/> accessed 20 August 2024.

³⁹A Sanni, 'Odyssey of Local Government Creation: An Examination of the Constitutionality of The Allocation of Local Governments' Revenue from the Federation Account.' <https://api-ir.unilag.edu.ng/server/api/core/bitstreams/fcc8e9a9-4488-45f3-8f84-551e53fba7e9/content> accessed 18 August 2024.

⁴⁰A.-G., *Lagos State v. A.-G., Federation* (2004) LPELR-10(SC) 41-44, 118-129.

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State governments' supervisory powers over local governments also contribute to intergovernmental conflicts.⁴¹ A situation that gives the state government absolute power to control local government activities ultimately erodes its ability to perform and, therefore, constitutes a clog in its wheel to function effectively as the third tier of government. It is, therefore, imperative to constitutionally define the status and powers of local government as provided for under the 1989 Constitution,⁴² and eliminate control of state governments for an autonomous and effective local governance structure in Nigeria.

Constitutionally, the local governments are legal entities distinct from the state governments. They are to function independently from the state or federal governments. The autonomy being sought for local government councils goes beyond recognising democratically elected councils, guaranteed in the constitution, to abolish state control. This would create a template for local governments to operate with the same level of independence from state governments as states operate from the federal government in the tripartite power-sharing structure. Thus, local government will be constitutionally protected from state government interference. The state government will no longer tamper with the administration of local government, including the illegal dissolution of local government councils, the appointment of caretaker committees⁴³ and the withholding or diversion of funds meant for local governments, just as the federal government is constitutionally barred from interfering in the affairs of state governments.

4.2 Funding of Local Government

Local Government is the third tier in the hierarchy of government, and conjointly with the federal and state governments, it contributes to delivering social services to the citizenry in grassroots development. Adequate funding is pivotal in local government operations and empowers this tier of government to fulfil its responsibilities. If local governments are well-funded, they can execute their mandates and provide socio-economic services such as primary healthcare, primary education, and infrastructure development (roads, drainages, water supply, electricity, etc.), directly impacting the local government's quality of life. Therefore, ensuring that local governments receive adequate and timely funding is not just a financial necessity but a fundamental requirement for effective governance and society's overall well-being.

The constitution has provided, according to Nwabueze,⁴⁴ three main sources of revenue for local government, which he enumerated thus:

- a) 20.60% of monthly revenue allocated from the Federation Account via section 162(3);
- b) grant from the state government from its revenue via section 162(7);
- c) Internally generated revenue, derived from functions the constitution directs to be assigned to local councils.

However, the constitution's provision for local government finances does not guarantee any measure of autonomy for the local government councils. The Constitution mandates that funds allocated to local governments be funnelled through the State Joint Local Government Account, managed by the state government in accordance with a formula prescribed by the State House of Assembly.⁴⁵ However,

⁴¹AN Ekpe, 'State and Local Government Relations and the Implementation of the 1976 Local Government Reforms in Nigeria.' [2021] AKSUJACOG, 1(1), 112, 122.

⁴² Sections 284-307.

⁴³It has been established that a Governor of a State lacks the powers to dissolve a democratically elected Local Government Council constituted in accordance with Section 7 of the Constitution 1999. See: Olubunmo v Governor, Ekiti State (2013) LPELR-20405(CA) 52-53.

⁴⁴B Nwabueze (n 37).

⁴⁵1999 Constitution, Section 162(6) and (8).

according to the Supreme Court, this arrangement urges the state government to ‘disdainfully disregard and disrupt democratically elected Local Government Councils and appoint their lackeys as caretaker committees to run affairs of the Local Governments.’⁴⁶

Interestingly, the apex court found that state governors are driven by political motives with their insistence to exert considerable control over funds intended for local development, sometimes diverting or withholding financial resources. Agim (JSC) condemned this despicable attitude by stating that state governments are only interested in managing local government allocations from the federation account and prefer a local government caretaker committee they can easily manipulate. This unconstitutional approach incites the absence of democratically elected councils. He declared that it was beyond their powers as governors to appoint caretaker committees for the local governments, which can only be by democratically elected councils.⁴⁷The consequence of this arrangement is the impediments to the ability of the local government to assert its position as a tier of government.

The status of Local Government will be strengthened considerably if any amount standing to the credit of local government is paid directly to Local Government.⁴⁸ The need to pay federal allocations directly to local governments, as declared by the Supreme Court,⁴⁹ is an important step toward decentralised fiscal federalism for effective local governance in Nigeria. A system of fiscal federalism must be based on the autonomy of the different tiers, and the Supreme Court’s decision underscores the right of local governments to receive funds directly from the Federation Account without interference from state governments.⁵⁰Fiscal federalism in the form of multi-level assumes as a distinctive dimension that the local governments have autonomy to receive and manage their resources.⁵¹ Therefore, implementing the Supreme Court’s decision would eliminate the issues associated with the state governments mismanaging funds meant for local government and the capacity of local governments to deliver essential services.⁵²

4.3 Regular Conduct of Local Government Election

The 1999 Constitution guarantees a system of local government by democratically elected local government councils. The local government councils (comprising a chairman and other members known as councillors) achieve this by performing specific constitutional or statutory functions assigned by implementing development and infrastructural projects.⁵³This implies the composition of local government of elected principal officers, who, by their statutory creation, can only act through these principal officers.⁵⁴ Elections in Nigeria are conducted for various federal, state and local government executive and legislative offices. While elections into federal and state offices are conducted by the Independent National Electoral Commission (INEC), local government elections are conducted by the

⁴⁶A.-G., *Federation v A.-G., Abia State* (2024) LPELR-62576(SC) 50

⁴⁷*Ibid*, 51-52.

⁴⁸AA Tobi and GI Oikhala, ‘Local Government Reforms and Grassroots Development in Nigeria.’ [2021] JAS 18(1), 113, 129.

⁴⁹A.-G., *Federation v A.-G., Abia State* (2024) LPELR-62576(SC).

⁵⁰*Ibid*, 146-154.

⁵¹R Malizia and E Tassa, ‘Administrative Decentralization versus Fiscal Federalism. Some Remarks Based on the Italian and European Countries’ Evidence.’ Paper presented at the Villa Mondragone International Economic Seminar on Rules, International Economy and Growth CEIS – University of Rome Tor Vergata, 23-24 June 2004, 29

⁵²SA Nidiya, DD Isa and AR Medugu, ‘Direct Revenue Allocation to Nigerian Local Governments: A Means to National Development.’[2022] IJRDO - JMB, 8(9), 1-8

⁵³Set out in the Fourth Schedule to 1999 Constitution.

⁵⁴*Ononikpov Okike* (2020) LPELR-49831(CA), 30.

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various States' Independent Electoral Commissions (SIEC).⁵⁵The conduct of these elections must not be inconsistent with any law (Electoral Act) made by the National Assembly.⁵⁶A review of the local government system in Nigeria will reveal that the conduct of local government elections for democratic local government councils guaranteed by the Constitution is far from satisfactory. That is if local government elections are conducted because, in most cases, most state governments refuse to conduct local government elections. Instead of democratic elected officials, unelected caretaker or transition committees mainly comprised of party loyalists and cronies of the governor are appointed.⁵⁷In the context of an increasing number of states not conducting local government elections, this is one major issue in local government administration in Nigeria.

The refusal of state governments in Nigeria to conduct Local Government elections is a significant impediment to democratic governance at the grassroots level. By delaying or refusing to conduct elections, state governments often undermine the constitutional mandate for periodic and free elections at the local level, which are essential for ensuring accountability and representation. The outcome is the constitution of caretaker committees in place of elected local officials to manage local affairs. The Supreme Court declared the perpetuation of unelected persons as members of caretaker committees, interim committees, or transition committees of local government councils in Nigeria to constitute a grievous violation of the 1999 Constitution.⁵⁸To the Supreme Court, there is no basis for the state government not to conduct local government elections. The apex court wonders what will become of Nigeria's democracy if the federal government and INEC refuse to conduct elections for the federal and state tiers before the end of the tenure of serving democratically elected officials and then replace the elected officials on the expiration of their tenures with caretaker or transition committees.⁵⁹ Even when the states decide to conduct elections, they are characterised by various degrees of widespread irregularities, malpractices and other corrupt influences that have significantly marred and undermined the electoral process.⁶⁰Critics argue that the SIEC, which are appointed and funded by state governments, often act in favour of the ruling party in the state, leading to skewed election outcomes that fall short of meeting the essential ingredients of a democratic electoral process. In dealing with this politically sensitive issue, the Supreme Court per Abiru (JSC), observed:

I hope that this judgment will put an end to the commandeering of funds meant for the Local Governments by state governors. This is particularly so, considering the way and manner local government elections are conducted by the various States "Independent" Electoral Commissions (SIECs). In most cases, those elections are mere sham process where the "more you look, the less you see" as it is colloquially said in this country. In those elections, candidates are handpicked by the Governor among his most trusted acolytes and unabashedly returned by the SIEC which is also composed of the Governor's handpicked proteges and minions. Those acolytes are then installed as "democratically elected" chairman and councillors, ready and willing to do the Governor's bidding. To them, the people do not matter so long as their master, the Governor, is happy or satisfied.⁶¹

⁵⁵Section 197(1)(b) of the 1999 Constitution; *A.-G., Abia State v A.-G., Federation* (2002) LPELR-611(SC) 23-24.

⁵⁶Electoral Act, Section 150.

⁵⁷I Hassan, 'Local Governance in Nigeria: An Unsettling State of Affairs.' Available at: <<https://www.urbanet.info/local-governance-nigeria-unsettling-state-of-affairs/>>accessed 13 March 2022.

⁵⁸*A.-G., Federation v A.-G., Abia State* (2024) LPELR-62576(SC), per Adumein (JSC), 173-174.

⁵⁹*Ibid*, per Abiru (JSC), 264-265.

⁶⁰CR Nwanna, 'Local Government Elections in Nigeria: A Comparative Analysis of Three States.' [2014] 1(11) *IJHSSE*, 180-192.

⁶¹*A.-G., Federation v A.-G., Abia State* (2024) LPELR-62576(SC) 153-154

This has resulted in a lack of confidence in the electoral process, as opposition parties and the public frequently question the fairness and impartiality of these elections. The dominance of governors' parties in these elections raises serious concerns about the credibility of democracy at the grassroots level. The Supreme Court had pronounced as illegal and unconstitutional that state governments receive, arbitrarily retain or divert funds allocated to local governments and the funds be paid directly to democratically elected Local Government councils. This decision has implications that guarantee the regular conduct of local government elections. By linking federal allocations with democratically elected local councils, the decision pressurises the state governments to conduct regular and fair local government elections, thereby preventing the use of unelected caretaker committees.

Beyond the Supreme Court decisions on federal allocations, there is no constitutional framework for executive and legislative offices. A constitutionally enshrined framework would standardise the processes for the election, tenure, and functions of local government executives (Chairmen) and legislators (Councillors), reducing the risk of arbitrary actions by state governments, such as dissolving councils or appointing caretaker committees. Moreover, there is a growing argument for INEC to take over local government elections, accompanied by the scrapping of SIEC. This is driven by concerns over the lack of transparency, fairness, and credibility in elections conducted by SIEC, often perceived as biased towards the governors' parties in their respective states. By assigning the responsibility for local government elections to INEC, a federal body with a more established reputation for impartiality and adherence to democratic standards, the integrity of these elections could be significantly enhanced. INEC's involvement would help ensure that local government elections are conducted uniformly across the country, with consistent standards and procedures that reduce the likelihood of electoral manipulation.

5. The Role of the Judiciary in Guaranteeing Local Government Autonomy

An overview of the past two decades: since the return of democratic rule in 1999, the judiciary has remained active in reinforcing the autonomy of local governments by invalidating actions taken by federal and state governments that infringe on the rights of local government councils. Local Government autonomy refers to 'a system of local government in which local government units have an important role to play in the economy and the intergovernmental system, have discretion in determining what they will do without undue constraint from higher levels of government, and have the means or capacity to do so.'⁶² Autonomy is a key feature of local governments, allowing them to make decisions tailored to the unique needs and preferences of local communities. But the local governments are both politically and financially not autonomous as both the other tiers constantly tamper with their activities, especially the state government. It is the judiciary's responsibility to interpret those provisions and declare any law or practice that deviates from the federal principles specified in the Constitution invalid.⁶³ Given this context, by adjudicating cases with issues that infringe upon Local Government powers, the judiciary checks on potential abuses of power by state or federal authorities so that local governments can operate as intended under the Constitution.

Additionally, the judiciary has an inescapable constitutional duty to hear and decide these matters. It is, therefore, incomprehensible that the state governments, even after the judiciary has signalled the illegality of such action, have a convoluted history of interfering in the tenure of Local Government officials through the dissolution of elected local councils and appointment of caretaker committees. It should come as no

⁶²H Wolman, R McManmon, M Bell and D Brunori, 'Comparing Local Government Autonomy Across States.' *George Washington Institute of Public Policy (GWIPP) Working Paper*, [2022]. Cited in per ADUMEIN, JSC (Pp 161-162

⁶³RT Suberu, 'The Supreme Court and Federalism in Nigeria.' [2008] 46(3) JMAS, 451.

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surprise that the judiciary has refused to approve these illegal actions. Through its interpretations of constitutional and statutory provisions, the judiciary safeguards Local Governments' rights to self-administration, ensuring that their leadership is not unduly tampered with by state politics. The need for judicial policing fuels the growing tendency of the courts to declare the dissolution of democratically elected local councils by state governors as unconstitutional, thereby upholding the democratic system of local governance constitutionally guaranteed. It also declared as 'one tier of government's inhumanity to another tier of government, starving the local government councils of funds to the extent that most of them cannot exercise their constitutional powers and/or perform their statutory functions.'⁶⁴

In the watershed case of *A.-G., Federation v A.-G., Abia State*,⁶⁵ the most recent ruling on Local Government, the Supreme Court conducted a wholesale review of Local Government autonomy and democratic principles at the local level. However, the judgement has attracted criticism, particularly the argument that it undermines the federal principles outlined in the 1999 Constitution. Critics, including former governors,⁶⁶ argue that the decision undermines the powers of state governments. Local Governments, they contend, are constitutionally recognised as responsibilities of the states. There is a basis for arguing that local governments function under the jurisdiction of state governments in Nigeria's federal system, which divides constitutional powers between the federal and state governments.⁶⁷ Therefore, the Supreme Court's decision can be seen as a perversion of this system that appears to put Local Governments on a level with states as federating units. According to this line of thinking, local governments cannot be treated as independent legal entities within the federal framework. This argument was amplified by the Punch Newspapers, which referred to the Supreme Court's decision as erroneous in its editorial.⁶⁸ It contended that acknowledging Local Governments as separate legal entities within the federal framework is unconstitutional. The editorial suggested that a fundamental shortcoming of Nigeria's federal system is the legal framework that allows local governments to operate within the power structure. It called for a reevaluation of this framework.⁶⁹ According to the editorial, the Supreme Court's decision is merely a superficial fix that ignores the deeper-seated issues of political structuring.

Even more worrisome is that the decision is seen as an instance of judicial overreach, in which case it is presumed that the court entered the political arena to determine policy rather than interpret the law. The decision to directly grant Local Governments statutory allocation could be construed as bypassing the states and abrogating the State Joint Local Government Account, which is a legislative function, not a judicial one. This raises questions on adherence to the doctrine of separation of power as enunciated in the presidential system.⁷⁰ Given this scenario, the Supreme Court is perceived to have overstepped its bounds by effectively altering the Constitution without a formal amendment process.⁷¹

⁶⁴*A.-G., Federation v A.-G., Abia State* (2024) LPELR-62576(SC), 161-162

⁶⁵*Ibid*, 50

⁶⁶Former Delta State Governor James Ibori contended that the ruling represents a setback for federalism, asserting that local governments should not operate independently of state oversight. – <https://punchng.com/supreme-court-judgment-on-lg-autonomy-a-setback-ibori/> accessed 20 August 2024.

⁶⁷1999 Constitution, Section 2(2).

⁶⁸'Supreme Court got it wrong on LG Autonomy.' <https://punchng.com/supreme-court-got-it-wrong-on-lg-autonomy/> accessed 20 August 2024.

⁶⁹*Ibid*.

⁷⁰O Fasan, 'Local Government Autonomy: The Perversity of the Supreme Court judgement.' <https://businessday.ng/columnist/article/local-government-autonomy-the-perversity-of-the-supreme-court-judgement/> accessed 20 August 2024.

⁷¹Fayemi faults Supreme Court on local government, says decision may contradict Constitution.' – <https://www.irohinodua.org/fayemi-faults-supreme-court-on-local-government-says-decision-may-contradict-constitution/> accessed 20 August 2024.

Adjudicating disputes bothering local governments is potentially valuable as an example of how the judiciary exercises its judicial review power to ensure the constitutionality of governmental actions.⁷²The interpretation that underlies the criticisms of the Supreme Court points to the failure of critics to understand the impact of the abuse by the state governments on local government autonomy, which the decision aimed to protect. Interestingly, critics of Supreme Court judgments underestimate the power of courts exercising judicial review to declare legislative and executive actions illegal or to interpret the Constitution purposefully.⁷³ Judicial review is the authority of the courts to determine the legality of activities of the executive or legislative branch.⁷⁴

Thus, critics dismissing the Supreme Court's judgments overlook how the judicial protects the rule of law and prevents the arbitrary exercise of political powers. Judicial review is a strategic approach that emphasises the courts' vital role in protecting the Constitution and democracy against possible violations by the political branches. Moreover, as a policy court, the Supreme Court's judgments set binding precedents that guide future legal interpretations and government policies. For instance, In *A.-G., Abia State v. A.-G., Federation*,⁷⁵ the Supreme Court declared the provisions of the Electoral Act, 2001, that affect the tenure of elective offices in local government councils unconstitutional. It held that the House of Assembly of a State and not the National Assembly is clothed with competence to make laws concerning matters connected with elections to local government councils. This has remained the practice till date. The basic principle governing the construction of statutes is the need for 'courts to adopt a purposive approach to give effect to the true intention of the lawmakers in the light of the purpose for which it was enacted.'⁷⁶ As observed in *PDP v Mohammed*,⁷⁷ once an interpretation meets the purpose of the provision of an enactment, it is acceptable and irrelevant to other possible interpretations. There was no legal basis for the Supreme Court to interpret sections 7(1) to mean replacing democratically elected councils with caretaker committees and 162(3), (5)-(6) to deprive councils of their constitutional allocations. It had to adopt a purposeful approach in interpreting the constitutional provisions to discover the intention of the legislature to allocate funds to local government.⁷⁸ In *Marwa v Nyako*,⁷⁹ the apex court had warned that it would never interpret the provision of the Constitution to give a contrary meaning to that which was intended by the legislature.

The decision has two implications. The first is on political or administrative independence, with which the democratic character of local governments guaranteed by the Constitution must be complied. The second is direct allocation to elected councils, which reinforces political independence. This is centred on the democratisation of local government as a basis for receiving federal allocations and payments of federal allocations directly to local government. In sum, this holding by the Supreme Court is consistent with other notable rulings on local government. These trends are mirrored in the legality of local government creation,⁸⁰ withholding funds meant for local governments by federal or state government,⁸¹ dissolution of democratically elected local government,⁸² and preserving the democratic character of Local Government councils.⁸³ Through judicial review, the courts have ordered the release of funds meant for local government,

⁷²IJ Koni, *Appreciating the Nigerian Legal System* (Fiftyfifty Institute Ltd, Ilorin, 2021) 295.

⁷³*Fagbemi v Omonigbehin* (2012) LPELR-15359(CA) 34.

⁷⁴J Amadi, *Fundamental Principles in Judicial Review* (Smile Printers Nig., 2021) 1-17.

⁷⁵(2002) LPELR-611(SC) 132-133.

⁷⁶*Abdulraheem v Olufeagba* [2006] 17 NWLR (Pt. 1008) 280, 355; *Elabanjo v Dawodu* [2006] 15 NWLR (Pt. 1001) 76, 138.

⁷⁷(2015) LPELR-40859(CA) 34.

⁷⁸*A.-G., Federation v A.-G., Abia State* (2004) LPELR-10(SC) 107-111.

⁷⁹(2012) LPELR-7837(SC) 171.

⁸⁰*A.-G., Lagos State v. A.-G., Federation* (2004) LPELR-10(SC).

⁸¹*Ibid.*

⁸²*A.-G., Plateau State v Goyol* [2007] 16 NWLR (Pt. 1059) 57, 94; *A.-G., Benue State v Umar* [2008] 1 NWLR (Pt. 1068) 311, 354-358; *Eze v Governor of Abia State* [2010] 15 NWLR (Pt. 1216) 324, 350.

⁸³*APC v Enugu State Independent Electoral Commission* (2021) LPELR-55337(SC) 52.

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as was the case between Lagos State and the Federal Government,⁸⁴ reinstated dissolved local government councils and prevented state governments from diverting or misappropriating resources intended for local governance. Conveniently, these decisions have also disinterred and reshaped local governments to fulfil their constitutional mandates and deliver services to the grassroots. The judiciary contributes to the overall stability and effectiveness of governance at the local level by upholding the rule of law and ensuring that local governments are treated as autonomous entities within the federal structure. From the judicial perspective, the judiciary has addressed the fundamental contradictions characterising the autonomy of local government conundrum.

6. Conclusion and Recommendations

In most constitutional democracies, Local Governments embody the principle of decentration, an autonomous administrative body governing at the grassroots level, directly engaging with the local population. There have long been debates about the nature, scope, and legitimacy of local government autonomy in Nigeria. Nigeria's federal system is portioned into three tiers - federal, state and Local Government. The sub national governance systems have the local government at the base. It exists to provide governance at the grassroots level. The status of Local Government today follows a series of reforms; it was conceptualised as the third tier of government, entitled to statutory allocation from the federation account, and was allotted definite functions as constitutionally permissible. What has become apparent from our exposition in this paper is that the state governments emasculate local governments. However, due to their constitutional recognition, local government can no longer be relegated in the trilateral governance structure that provides the pivot for federalism in Nigeria.

Resolving the Local Government autonomy conundrum as envisaged under the tripartite power-sharing system has become imperative. Constitutional ambiguities regarding the status, powers, composition and functions of local government continue to fuel state government's undue interference with local government. To address these issues, the role of local government must be constitutionally defined and granted necessary autonomy. Instead of vesting in the state government, the Constitution should provide for the structure, composition (mode of election), finances and functions of local government. The paper argued that the success of a tripartite power-sharing arrangement depends on the extent to which local governments are entrenched as autonomous entities in the Constitution. The recent Supreme Court decisions have already established a framework that has considerable effects on democratising local councils and finances. Credible Local Government elections framework is also needed to ensure administrative autonomy. This will require constitutional amendments to clearly define and secure the autonomy of local governments, including provisions for financial independence, administrative control and institutional frameworks for accountability and transparency. In this regard, local government elections should be captured in the nationwide general election cycle and administered by INEC. It will enhance the credibility and transparency of local elections and resolve the duplication of functions that the state electoral commission represents.

The Supreme Court has raised substantial concerns about the practice of federalism in Nigeria, which requires a pragmatic approach. Addressing the recurring challenges of power-sharing in a tripartite structure can enhance the functionality of Nigeria's federal system, ensuring that Local Governments play an important role in the country's development and governance. Implementing the positions articulated in the paper will create a balanced trilateral power-sharing framework for a functional federal system with a Local Government system that meets people's basic needs at the grassroots.

⁸⁴A.-G., *Lagos State v. A.-G., Federation* (2004) LPELR-10(SC).