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ABSTRACT

It has been observed that a recurring issue since the inception of local government administration in Nigeria has been the recalcitrant behavior of governors in their unconstitutional removal of democratically elected local government chairmen, whose offices are guaranteed under section 7 of the 1999 Constitution of Federal Republic Nigeria, which provides for the existence of the local government as the third tier of government. Thus, in these writers' opinion, this section has been misinterpreted and rather taken to the very extreme by state governors who see local governments as mere appendages of the state government and subject to the whims and caprices of the governor. As a result, there have been a ferocious control of the local government in areas of funding and administration. This has led to widespread agitations for a more independent third tier of government. The most recent being the local government autonomy bill which aims at increasing the financial autonomy of the local government through the creation and maintenance of a special local government account into which all allocations shall be paid, as well as a separate savings account which would serve as a reserve, before subsequent disbursement to other tiers of government.

1.0 INTRODUCTION

This paper examines the practice of the Local Government Administration in Nigeria. It further elucidates the meaning, constitutional and legal nature of Local governments with respect to the 2020 Constitutional Amendment Bill. This is with a view to determine the challenges faced by the Local Government Administrations in Nigeria and proffer solutions to it.

Nigeria operates a democratic government with a written constitution which stands above all other laws and all laws made by the legislature must be in accordance with it¹. Flowing from the above, The 1979 Constitution clearly expressed the autonomy and functions of the local government in line with the 1976 reforms, and it became mandatory for the Federal and State Governments to make direct financial grants and allocations to the Local Governments.² The 1999 Constitution's provisions are in pari materia with that of the 1979 CFRN. Unfortunately, in most cases the constitutional provisions are flouted and disregarded with impunity.³

2.0 MEANING OF THE LOCAL GOVERNMENT

The Local Government is a creation of the Constitution and Statute pursuant to Section 7(1) of the 1999 CFRN. By virtue of Section 2(2) of the CFRN. Nigeria shall be a federation comprising of states and local governments. There is no widely accepted definition or concept of the term local government. The 1976 Local Government reforms defines it as:

¹ Sections 1(1) and Section 1(3) of the 1999 CFRN; Attorney- General of Bendel State v. Attorney- General of the Federation and 22 Ors (1981) All NLR 85

² Section 149(2) of the 1979 Constitution

³ Knight Frank & Rutley (Nig.) Ltd v. Attorney- General of Kano State(1990) 4 NWLR (Pt. 143) 210 ; Bamidele & Ors v. Commissioner for Local Government and Community development, Lagos State (1994) 2 NWLR (pt. 328) 568

Government at local level exercised through representative councils established by law to exercise powers within defined areas has 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 ensure that local initiative and response to local needs and conditions are maximized⁴.

This definition justifies the position that local governments are established by law, have control, finance, revenue in conjunction with their status as a necessity in modern governance especially in matters pertaining to that locality alone.

3.0 IS THERE “TRUE FEDERALISM” IN NIGERIA?

It has been argued by antagonists of local government autonomy, that the local tier is not a tier of government and challenging Governors for encroaching on the local government amounts to ignorance of the state law. In addition to this, the proponents posit that there are only two tiers of government – the national or central government and the state governments. These writers submit that this is false and contrary to the express and unambiguous provisions of the CFRN. It is delusional to argue that true federalism exists anywhere in the world. In reality, there is no ideal federalism just as there is no false or fake federalism.

Conceptually, some scholars have defined “federalism” as a political system where there are at least two levels of government, the central or federal government and other territorial, sub units, which may be variously called

⁴ Hugh Whalen is in agreement with this definition

as states, regions, provinces, republics, unions etc.⁵. In Nigeria, three tiers of government exist by constitutional provision. However, within the context of the 1999 CFRN and the interpretation by the appellate courts, including the apex Court of the land, the local government is a constitutionally recognized tier of government. In *Governor Ekiti State v. Olubunmi*⁶, the apex Court held that any action of the governor which has the capacity of undermining the constitution is tantamount to executive recklessness which will not be condoned. Similarly, in *Tabwasa & Ors v. Adamawa State Govt & Ors*⁷, The Appellate Court held that all tiers of government in Nigeria, from the date of commencement of the 1999 CFRN, are to be managed, administered by persons or officials who are/were democratically elected by the people, hence Section 7(1) of the CFRN is the guiding provision for the structure of governance at Local Government levels. Furthermore, it guarantees the existence of a democratically elected government at that local level. Therefore, it is submitted that the local government is within the constitutional arrangement of Nigeria's and cannot be undermined or rather expunged because it defeats the doctrine of the Supremacy of the Constitution⁸.

4.0 FACTORS UNDERMINING LOCAL GOVERNMENT AUTONOMY IN NIGERIA

Nigeria returned to the democratic system in 1999, this was followed by an avalanche of intense debates, discussions and divergent views regarding the

⁵ Femi Aborisade, 'In Defense of Local Government Autonomy' *The Guardian* (Lagos, 8 December 2022) <<https://www.idea.int/news-media/media/what-federalism>> accessed on 7/01/2023

⁶ (2017) NWLR (Pt. 1551) 1, 35

⁷ (2019) LPELR- 47326(CA)

⁸ Section 1(1) and 1(3) of the 1999 CFRN

status of local government administration in Nigeria. Thus, this paper attempts to identify the problems local governments face in their operation as follows:

The problem of proper power devolution and financial autonomy: The eroding of financial independence has led to no meaningful developments at the grassroots level. The contentious issue is that Section 162(6) of the 1999 CFRN specifically creates the “State Joint Local Government Account”, but this has been subjected to so much abuse in subsequent relations with the state government, as governors turn themselves into supervisors and overlords of the Local Government. This section does not allow direct funding of local governments from the federation as held in *Attorney-General Ogun State & ors v. Attorney- General of the Federation*⁹.

Thus, successive governors have always found it easy to make them everlasting additions of the state, rendering them almost irrelevant in the administration as the third tier of government. In addition to this, the establishment, structure, compositions, finance and functions are promulgated upon by the State House of Assembly which also has the authority to repeal or amend such laws when the needs arises. Furthermore, Insecurity and poverty have been on the rise because we have abandoned the local government system in terms of giving them financial autonomy, thereby ignoring the fact that people in rural communities understand their terrain better and know how to deploy resources towards tackling security challenges. In addition to this, the autonomy to consider and approve their annual budget is not existent.

⁹ (SC 137 OF 2001) (2002) NGSC 3; (2002) All NLR 27

Undue Political Interference: It has become quite a nasty practice that a Governor's first action in office is to dissolve the existing local councils and appoint a caretaker committee. It is trite in law that a governor cannot remove or truncate the tenure of democratically elected individuals of the local government council. However, due to the Federal system which is constitutionally donated, it amounts to arbitrariness and executive rascality for Governors to seek to curtail the freedom of local government as held in *Governor Ekiti State v. Olubunmi*. The Supreme Court in a landmark ruling in the recent case of *ALGON v. Attorney- General of Oyo State*¹⁰, declared that the sacking of 33 local government chairmen by the Oyo State Governor, Seyi Makinde, was illegal, amounts to executive recklessness which is contrary to the Constitutional Law and fined the state N20 Million for the act. The Governor had sacked all the elected officials, who were elected in 2018.

The Creation of Local Government Councils: The House of Assembly has the authority to create new Local governments under the provisions of Section 8(3), 8(5) and (6) of the 1999 CFRN (As Amended). It has the absolute preserve but it must be exercised in accordance with the provisions of the Constitution. In *Attorney General of Lagos State v. Attorney General of the Federation*¹¹, The Supreme Court restrained the Federal Executive authorities from interfering in the creation of new local government through withholding statutory funds for both state and existing local governments.

¹⁰ Supreme Court Judgement, May 2021 ; Akpan v. Umah (2002) 7 NWLR (Pt 767) 701 ; Attorney- General Plateau State v. Goyol (2007) 16 NWLR (Pt 1059) at 94- 96

¹¹ (2005) 1 MJSC 1 ; Balogun v. Attorney General of Lagos State

Conflicts between The Federal Governments, Regulators and State Governments: One of the many good things that the present administration has done in the area of reform includes the push for the fiscal autonomy of the judiciary and local governments, both of which have been stoutly resisted by vested interests. In May 2020, President Buhari signed Executive Order 10 to enforce the financial autonomy of the states' judiciary and legislature. The States raised objections and went to court. In February 2022, the apex court ruled that the controversial Executive Order 10 was in conflict with the provisions of the 1999 Constitution with regard to the powers of each arm of government. The President was adjudged to have acted ultra vires. Although, this was an administrative directive to streamline the plundering of their allocations, it was unconstitutional, null and void to the extent of its inconsistency. There was yet another matter in 2019, the Nigerian Financial Intelligence Unit (NFIU) had issued guidelines with regard to local governments to the effect that not more than N500, 000 can be withdrawn daily, and that state governments must not tamper with local council funds, and can only act within the purview of the law as transit points. The state governments went to court, But the Federal High Court in Abuja in May 2022, ruled that the NFIU guidelines were in order to promote transparency and that the plaintiffs (the 36 state governments) had no case. The Court found that the NFIU within its enabling Act had powers to provide guidelines. It was the second time that a court of law would decline the attempt by state governments to resist NFIU guidelines.¹²

¹² Reuben Abati,'On Local Government Autonomy' *The eagleOnline* (Lagos, 6 December 2022) < <https://theeagleonline.com.ng/on-local-governments-autonomy-by-reuben-abati/?amp=1>> accessed 8 January 2023

5.0 MODIFICATIONS THAT THE LOCAL GOVERNMENT AUTONOMY BILL GENERATES

The Bill has been passed in the National Assembly pending the decision of Two-thirds of the State House of Assembly, Sixteen out of Thirty- Six States in the Federation have passed the Bill, and it requires eight more states to meet the amendment threshold of Twenty-four states. The Bill was sponsored by Senator Ahmed Kabba Kaita.

The Bill aims to abrogate and repeal the State Joint Local Government Accounts which has accounted for low development at the grassroots.

The legislation also mandates each state to pay to local government council in its area of jurisdiction, a proportion of its internally generated revenue on such terms and in such manner as may be prescribed by the House of Assembly

The Bill creates an avenue for financial independence by empowering each Local Government Council to create and maintain its own Special Account called “Local Government Council Allocation Account” in which all allocations shall be paid as stipulated in Section 162(7) of the Constitution Amendment Bill 2020.

The Bill makes provisions for Savings in the Federation Account before distribution to other levels of government pursuant to Section 162(4) and (5) of the Constitution Amendment Bill 2020.

The Bill devolves and grants powers to the grassroots through financial and administrative autonomy. It also seeks to allow local governments to conduct their own elections alongside unlocking the potential of each local council to generate its revenue for grassroots development.

The Bill also addresses some of the insecurity challenges in the state. Local governments can tackle insecurity within its jurisdiction, as well as stimulating the local economy, thereby reducing poverty at grassroots level.

5.0 RECOMMENDATIONS

In view of the fact that the Local Government in Nigeria has been unable to fully realize its potential, the 2020 Constitutional Amendment Bill on the issue of local Government Autonomy is a step in the right direction towards achieving the objectives for which the Local Government as a Third tier of Government was created. Despite the challenges faced in Local Government Administration in Nigeria as stated above, there is no gainsaying that their financial autonomy is paramount in a modern dispensation. Therefore, it is suggested that the Federal Government accelerates action on granting autonomy to the Local Governments in Nigeria through:

A more robust and effective lobbying to achieve the required two-third approval from the State Houses of Assembly in order for the Bill to become Law. It is also submitted that Courts of law in Nigeria should be proactive in hearing of cases bordering on dissolution of Local Government and order that the status quo be maintained until the final determination of the cases. This is to discourage Governors from engaging in the arbitrary act of removal. The Courts of law, particularly the apex Court should be bold to reinstate dissolved L.G Councils for the remaining period of their tenure in order to preserve the tenets of Rule of Law, as their tenure had not expired, but was illegally truncated by the Governor.