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LOCAL GOVERNMENT AUTONOMY IN NIGERIA: COPING WITH UNCERTAINTIES

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Abstract

Forty-seven (47) years after its first statutory enablement, and twenty-seven (27) years after its statutory consolidation, Nigeria still grapples with the uncertainty as to whether Local Government Councils' (LGC) autonomy is a constitutional right or not. The Supreme Court's decision in AG of Fed v AG of Abia State & Ors, and the Anambra Local Government Administration Law 2024 are pointers to the persistence of the uncertainty. This study concedes that the contestation as to LGC autonomy is perennial, and cannot be healed by the judgment of any court, except by an amendment of the Constitution of the Federal Republic of Nigeria 1999 to expressly provide for LGC autonomy.

Keywords: Local Government Autonomy, Federation Account, State Joint Local Government Account, Constitution of the Federal Republic of Nigeria 1999, Local Government Council

Introduction

The political expediency in extending political governance to the grassroots has been the rationale for the continuous quest to make Local Government Councils (LGCs) in Nigeria autonomous. The foundation for LGC autonomy can be found in many reforms aimed at power sharing among the three tiers of government in line with the federal structure of Nigeria. Similarly, there are constitutional provisions along the developmental history of Nigeria that support power sharing among the three tiers of government in Nigeria. Consequently, power sharing and decentralization of government have remained an all-important issue in Nigeria's developmental history. In terms of uniformity, it was the 1976 LGA reforms proposal that initiated the concept of uniformity for the establishment and operation of the LGC System in Nigeria. Before them, matters of Local Government Area (LGA) establishment and administration were entirely the exclusive preserve of the Regional Governments. The Regional Governments had administered the LGA's as they deemed expedient.

The matter of power sharing and decentralization of government and, accordingly, Local Government (LG) autonomy was institutionalized by the Constitution of the Federal Republic of Nigeria 1979 (CFRN 1979). The Constitution provided that "the system of democratically elected local government council is under this constitution guaranteed."¹ However, successive governments in Nigeria have acted in disregard of this constitutional provision regarding power sharing, decentralization of government, and LG autonomy, which are the major indicators for the system of democratically elected LGCs as envisaged by the CFRN 1979. The disregard of this essential constitutional provision has consistently undermined the autonomy of the LGC and its benefit to the Nigerian state.

Another statutory effort at strengthening power sharing, decentralization of government and, LG autonomy in Nigeria was made by the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999). The CFRN 1999 did reiterate the provisions of the CFRN 1979 as it related to the LGA as the third tier of government in Nigeria by the provision that "the system of local government by democratically elected local government councils is under this Constitution guaranteed."² However, regardless of these developments, LG autonomy and particularly matters relating to the leadership recruitment process and handling of the funds allocated from the Federation Account to the LGCs, have continued to generate a lot of contestations. This is such that 47 years after its first statutory enablement in CFRN 1979, and 27 years after its statutory consolidation by CFRN 1999, the matter of power sharing, decentralization of government and LG autonomy is still shrouded in uncertainties. The evidence of which are that state governors suppress LGCs - appoint cronies as LGA Caretaker Committee or conduct moot elections of LGA leadership (Chairmen and Councilors) in blatant disregard of CFRN 1999's prescription for Local Government Councils that are democratically elected.

Based on the foregoing, this work sets out to examine issues relating to power sharing, decentralization of government and LG autonomy in Nigeria, and the components of uncertainties sustaining their observance in breach. The study is divided into nine sections. The first section is an introduction to the study, the second is an exploration of the Local Government system in Nigeria, the third section interrogates Local Government Autonomy in Nigeria, the fourth section reviews power sharing, decentralization of government and LG autonomy in Nigeria, the fifth section examines the judiciary and Local Government Autonomy, the sixth section discusses the uncertainties bedeviling Local Government autonomy in Nigeria, the seventh section explains how the uncertainties are exploited by the states governments, the eighth section explores indeterminacy of the issue of Local Government Council autonomy, and the ninth is the authors' concluding thoughts.

¹ Sec.7(1) 1979 Constitution

² Sec.7(1) CFRN 1999

Local Government System in Nigeria

The nature, structure, and administration of LGAs have largely been dependent on the definition or perception of the concept of LG. It appears that the consensus revolves around perceiving LG as a form of “devolution” of administrative power in contrast with “deconcentration” of power, where “devolution” involves conferring legal authority to discharge specified or residual state functions on lower-level constituted authority.³ The UN provided a more concise explanation for the concept of LG when it defined LG as “... a political sub-division of a nation (or in a federal system a state), which is constituted by the law and has substantial control of local affairs including the power to impose taxes or to exert labour for prescribed purposes.”

Starting with the 1976 Nigerian LG Reforms Guidelines, LG has been seen as government at the local level, exercised through representative councils established by law to exercise specific powers within defined areas. This description of LG in Nigeria was concretized by the CFRN 1999⁴ when it created Seven Hundred and Sixty-Eight Local Government Areas in Nigeria.⁵ Engraving LGAs as an essential part of the state structure for Nigeria, and in furtherance of the democratic dispensation of the then Nigerian state, the CFRN 1999 prescribed for the extension of the democratic governance model at the Federal and State levels to the LGAs (grassroots) level by providing for an LGA system that is administered by democratically elected LGCs. Furthermore, the CFRN 1999, in its intendment to guarantee the existence and sustainability of a system of local government in Nigeria, mandated State Governments to ensure the existence of LGCs under a Law which provides for the establishment, structure, composition, finance and functions of such councils.⁶ The CFRN 1999 also empowered the National Assembly to make provisions for statutory allocation of public revenue to local government councils in the Federation.⁷ To cap it all, the CFRN 1999 included Local Government in its definition of “government,” thus “government includes the Government of the Federation, or of any State, or of a Local Government Council or any person who exercises power of authority on its behalf.”⁸

Local Government Autonomy in Nigeria

Local Government autonomy in Nigeria is consistent with the federal structure of government in Nigeria. As noted by Nwabueze,⁹ autonomy under a federal system presupposes non-interference. A situation where each government enjoys separate existence and independence with no instructions from another; i.e., where no government controls the other. Therefore, in federal democracies, Local Government autonomy means that the Local Government is an independent legal entity capable of suing and being sued in its corporate name. And in tandem with democratic governance, Local Government has a complete apparatus of democratic governance such as the Executive, the Legislature and the Judiciary. In addition, the Local Government has an avenue to generate its own income and disburse the same without extraneous oversight from a foreign agent.

This concept of Local Government autonomy was clearly institutionalized by the provisions of the CFRN 1999 touching and bordering on Local Government creation, administration, functions, and financing. First, the CFRN 1999 guaranteed the existence of the Local Government system in Nigeria by the delineation of the Area of the Federal Republic of Nigeria into Seven Hundred and Sixty-Eight

³ LC Odo “The challenges of Local Government Autonomy in Nigeria.” (2014) *International journal of advanced studies in ecology, development and sustainability*. Vol. 2, No. 1, January

⁴ Sec. 3(6) CFRN 1999

⁵ See details in the second column of Part I of the First Schedule to this Constitution and six area councils as shown in Part 11 of that schedule

⁶ Sec. 7 CFRN 1999 (the limitations here are as it relates to creation of new states and boundary adjustments and matters related to it see Sec.8 CFRN 1999)

⁷ See item 6, Fourth Schedule, CFRN 1999

⁸ See Sec. 318 CFRN 1999 (i.e. the interpretation section)

⁹ BO Nwabueze, “the presidential constitution of Nigeria,” (1983) *Conference Paper*, ABU Zaria

Local Government Areas - as shown in the second column of Part I of the First Schedule to the CFRN 1999; and Six Area Councils as shown in Part II of that Schedule.¹⁰ Second, the CFRN 1999 made elaborate provisions for the democratic administration of the LGA by democratically elected Local Government Councils, and by directing the State Governments to ensure their existence, including finances for the councils.¹¹ Third, the CFRN 1999 clearly delineated the duties of a Local Government Council (LGC) to include participation in economic planning and development of the area over which the Local Government Council may exercise authority,¹² and others set out in the Fourth Schedule to this Constitution.¹³ Fourth, the CFRN 1999 authorized the National Assembly to make provisions for statutory allocation of public revenue to LGAs in the Federation.¹⁴ Similarly, the CFRN 1999 authorized the House of Assembly of a State to make provisions for statutory allocation of public revenue to LGAs within the State.¹⁵

Notwithstanding the foregoing, to guarantee the sustainability of the LGA as an autonomous unit (third tier) of government of the federation, and ensure their administration through democratically elected LGCs, the CFRN 1999 included the LGA among the list of beneficiaries of the amount standing to the credit of the Federation Account, independent of the Federal and State Governments.¹⁶ Although the amount due to the LG under the scheme is paid through the State Governments¹⁷ vide a special account called the State Joint Local Government Account,¹⁸ the CFRN 1999 was, however, emphatic that the amount standing to the credit of LGC in the Federation Account is for the benefit of Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.¹⁹

Furthering the intent of crystallizing Local Government autonomy, the CFRN 1999 mandated states governments to pay to the LGAs within their states a proportion of their total revenue - on such terms and in such manner as may be prescribed by the National Assembly.²⁰

Power Sharing, Decentralization of Government and LG Autonomy in Nigeria

The CFRN 1999 has a demonstrated intent to guarantee power sharing, decentralization of government, and LG autonomy in the administration of the Federal Republic of Nigeria. The pages of the CFRN 1999 are replete with provisions targeted at setting the LGA apart as an independent functional segment of the Federation (the third tier of government). This is evident in the provisions of the CFRN 1999 targeted at ensuring the sustainability of the LGA.

As it relates to power sharing and decentralization of government, the CFRN 1999 provided for the administration of LGAs by democratically elected officials. Furthermore, it authorized both the National Assembly²¹ and the States' Houses of Assembly²² to make provisions for statutory allocation of public revenue to Local Government Councils in the Federation²³ and within each state's jurisdiction respectively, for their sustainability.

¹⁰ Sec. 3(6) of CFRN 1999. NOTE: The six (6) Area Councils in the Federal Capital Territory Abuja made it up to Seven Hundred and Seventy-Four

¹¹ Sec. 7(1) of CFRN 1999

¹² See Sec. 7(2) of CFRN 1999

¹³ See details in the Fourth Schedule to CFRN 1999

¹⁴ Sec. 7(6)(a) of CFRN 1999

¹⁵ Sec. 7(6)(b) of CFRN 1999

¹⁶ Sec. 162(3) of CFRN 1999

¹⁷ Probably as an extended transition arrangement similar to that made under Sec. 313 of CFRN 1999 or in the belief (in trust) that the State Governments will deal fairly with the portion of the amounts due the LGA within their states.

¹⁸ Sec. 162(6) of CFRN 1999

¹⁹ Sec. 162(5) of CFRN 1999

²⁰ Sec. 162(7) of CFRN 1999

²¹ Sec. 7(6)(a) of CFRN 1999

²² Sec. 7(6)(b) of CFRN 1999

²³ Sec. 7(6)(a) of CFRN 1999

By its prescription of only a democratically elected government for the administration of LGCs, the CFRN 1999 has ensured that the governance structure at the LGA level is in tandem with those at the State and Federal levels. This is the rationale for the existence of the Local Government Executive (headed by the LGA chairman), the Legislature (Councilors - headed by a speaker), and Customary Courts (headed by a chairman). In a similar vein, public revenue standing to the credit of the Federation Account is split into three for the Federal, State and LGAs.²⁴

However, the observance of these robust constitutional provisions for power sharing, decentralization of government, and LGA autonomy in Nigeria has been in breach. This is not unconnected with the dismal quality of democratic leadership in post 1999 Nigeria. Leaning on the legacy of military dictatorial administrations that gave way to democratic governance in 1999, the federal government has been largely selective in the application of the CFRN 1999. Consequently, State Governments have bifurcated and selectively interpreted and applied the provisions of the CFRN of 1999 to the detriment of the LGA in particular and democratic governance in Nigeria at large. Increasingly, State Governments have consistently ignored, neglected, or abandoned the first prong of section 7 (1) of CFRN 1999 dealing with running the LGA through “democratically elected Local Government Councils,” and have taken tenaciously to the second prong of section 7 (1) of CFRN 1999 which placed a duty on them to ensure the existence of LGCs under a Law that provides for the establishment, structure, composition, finance, and functions of such councils.²⁵ Through this selective interpretation, State Governments have micromanaged the affairs of LGAs within their states through hand-picked LG Caretaker Committees, Transition Committees, Administrators, Interim Councils, etc.; a means alien to and contrary to the provisions of S.7(1) of CFRN 1999.

With respect to revenue allocation, LGCs have received a pittance from the State Governments. Leaning on the phrase “such proportion” as used in the description of the amount State Governments are to pay to the LGCs in their area of jurisdiction from their total revenue,²⁶ State Governments have argued that it is within their legislative competences to determine the amount to be paid from their total revenue²⁷ to LGCs within their states as prescribed by the House of Assembly of the State.²⁸

The Judiciary and Local Government Autonomy

State Governments' failure and/or refusal to pay the LGAs appropriate amounts due to them from the Federation Account contrary to section 162(5) of CFRN 1999, and State Governments' administration of LGAs by States-appointed LGA Caretaker Committees or Administrators or Interim Councils in contravention of section 1(2) and S. 7(1) of the CFRN 1999 has been the subject of litigation.

In *AG of Fed v AG of Abia State & Ors*,²⁹ the Supreme Court was called upon to determine the appropriateness or otherwise of State Governments' failure or refusal to pay to the LGCs amounts due to them from the Federation Account after receiving the allocation from the Federation Account for the benefit of the LGCs. Also, up for determination in that suit was the question of administration of LGAs by States appointed Caretaker Committees or Administrators or Interim Councils.

The Plaintiff's (Federal Government) argument is that:

- (i) considering that state governments have always received but persistently refused to pay to LGAs the exact amount of money standing to their credit in the Federation Account,³⁰

²⁴ Sec.162(3) of CFRN 1999

²⁵ Sec. 7(1) of CFRN 1999

²⁶ See 162(7) of CFRN 1999

²⁷ See Sec. 162(7) of CFRN 1999

²⁸ See Sec. 162(8) of CFRN 1999

²⁹ (2024) LPELR-62576 (SC))

³⁰ In violation of Sec.162(4), (5) and (6) of the CFRN 1999

the Federation can validly pay the said money directly to the LGAs. And the intent is to protect the intention or objective of the CFRN 1999 from being defeated.

- (ii) State governments' administration of LGAs through state-appointed Local Government Caretaker Committees, Interim Councils and Administrators amounted to governing or taking control of the government of a part of Nigeria (LGA)³¹
- (iii) Administering LGAs through state-appointed Local Government Caretaker Committees, Interim Councils and Administrators endangered the continued existence of the LG as a third tier of the Federal Governance structure.³²

The Defendants' argument in reply is that:

- (i) the Federation cannot validly pay the money standing to the credit of the LGAs in the Federation Account directly to LGAs, as to do so would violate section 162(5) and (6) of the CFRN 1999 that requires that it be paid directly to the States for the benefit of their LGAs and that each State pays same into a State Joint Local Government Account maintained by the State.
- (ii) States are entitled to retain the said allocation and use it for the benefit of the LGAs; and that the failure of some of the States to organize the conduct of democratic elections of LGCs is not deliberate as there are subsisting orders of Courts in pending suits restraining them from holding democratic elections for LGAs in their States.

Delivering its judgment:

- (i) ***On the question of whether the Federation can validly pay directly to LGAs the amount standing to their credit in the Federation:*** Taking into cognizance the fact that the States have for over two decades persisted in their refusal to pay the money to the LGAs under the claim of the right to retain and use same for the benefit of the LGAs by virtue of S.162(5) and (6) of the CFRN 1999, the Supreme Court held that “the Federation can pay Local Government allocations from the Federation Account to Local Government Councils directly or pay to them through States. In this case, since paying them through states has not worked, the justice of the case demands that the Local Government Council allocations from the Federation Account should henceforth be paid directly to the Local Government Councils.”

The court's decision was based on the fact that the approach of a direct payment to the LGCs was “consistent with the ‘living tree’ doctrine of constitutional interpretation enunciated in *Edward v Canada*³³ which postulates that the Constitution ‘must be capable of growth to meet the future’;”³⁴ and would help achieve the intention and purpose of the CFRN 1999 and accord with the smooth running of the system of paying LGCs their allocations from the Federation Account. The court resisted the temptation of interpreting the “shall” in Subsection (5) of S.162 of the CFRN 1999 as imposing a mandatory duty on the Federation to pay LGCs' allocation from the Federation Account only through the States, as such would work against the intention and purpose of the CFRN 1999 and create an unconstitutional status quo, unworkable and oppressive situation.

Furthermore on the issue of governance of Local Government Areas: The court emphasized that the federal governance structure in the CFRN 1999 consists of three tiers, namely, Federal Government, State Government, and Local Government; and requires the government of each tier to be democratically elected, particularly the LGAs.³⁵ In that case, the government of LGAs shall be by democratically elected Local Government Councils; it cannot be governed by any other body or means, i.e., “it cannot be governed or administered by the Federal Government,

³¹ Contrary to Sec.7(1) of the CFRN 1999, therefore, a violation of Sec.1(2) of the CFRN 1999

³² In violation of Sec.162 (4), (5) and (6), Sec.1(2) and Sec.7(1) of the CFRN 1999

³³ (1932) AC 124

³⁴ Per Justice Emmanuel Akomafe Agim (JSC). See page 40 of the CTC of the judgment in *AG of Fed v AG of Abia State & Ors.* above

³⁵ See Sec.7(1)) of CFRN 1999

State Government, Governor of a State, Local Government Caretaker Committee, Interim Local Government Council, Administrator, Head of Local Government or by whatever name called or by any other State agency or other body.”

With reference to *Ajuwon v Gov. of Oyo State*,³⁶ *Gov. of Ekiti State v Olubunmo*,³⁷ *Eze v Gov. of Abia State & Ors*,³⁸ and *Friday v Governor of Ondo State*³⁹ The Supreme Court noted that:

the law is settled by a long line of decisions of the Supreme Court that, by virtue of sections 1(2) and 7(1) of the CFRN 1999, Local Government must be run by democratically elected Local Government Councils and no other body and that the government or administration of a Local Government Area by a State Government, Governor of a State, Local Government Caretaker Committee, Interim Local Government Council, Administrator, Head of Local Government or by whatever name called or by any other State agency or other body is not in accordance with the CFRN 1999, is therefore unconstitutional, illegal and of no effect.⁴⁰

The Supreme Court further noted that beyond prescribing that Local Government administration shall be by democratically elected Local Government Councils, section 7(1) of the CFRN 1999 imposed a constitutional duty on the Government of every State to ensure their existence under a law. “The word existence in section 7(1) includes their election and tenure. Section 7(1) also requires that the said law provides for the establishment, structure, composition, finance, and functions of such councils. A law made by the Government of a State to ensure the existence of a Local Government Council in accordance with section 7(1) of the CFRN 1999 must not contain any provision that undermines or destroys the democratic nature of the Local Government Councils or that renders them departments or mere appendages of a State Government. Such law must provide for their establishment, structure, composition, finance, and function as government of the Local Government Area independent of the State Government.” The Supreme Court emphasized that “a democratically elected Local Government Council does not exist at the pleasure, whims and caprice of either the Governor or the House of Assembly”⁴¹ as was held in *Ajuwon v. Gov. of Oyo State*.⁴²

Consequently, the Supreme Court Ordered as follows:

- (i) AN ORDER of injunction restraining the Defendants, by themselves, their privies, agents, officials or howsoever called from further collecting, receiving, spending or tampering with Local Government Council funds from the Federation Account for the benefit of Local Government Councils.
- (ii) AN ORDER that the Federation or Federal Government of Nigeria through its relevant officials forthwith commence the direct payment to each Local Government Council of the amount standing to the credit of each of them in the Federation Account.
- (iii) AN ORDER OF immediate compliance by the States, through their elected or appointed officials and public officers, with the terms of this judgment and orders made in this suit and successive compliance by successive State Government officials and public officers.

³⁶ (2021) LPELR-55339(SC)

³⁷ (2017) 13 NWLR (Pt.1551) 7

³⁸ (2014) 14 NWLR (Pt.1426) 192

³⁹ (2022) 16 NWLR (pt.1857) 585 at 648 SC

⁴⁰ (2024) LPELR-62576(SC)

⁴¹ Per Justice Emmanuel Akomafe Agim, JSC. See pages 46 of the CTC of the judgment in *AG of Fed v AG of Abia State & Ors*.

⁴² Above

The Supreme Court had noted that “it is obvious from this provision⁴³ that the constitution did not intend a joint ownership of the amount standing to the credit of the federation account to each of the three tiers of government and therefore provided that the said amount be distributed amongst them. This distribution makes each of them a separate owner of the part distributed to it.”⁴⁴

Uncertainties bedeviling Local Government Autonomy in Nigeria

Uncertainties do not only exist in the regime of corporate accountability in the Nigerian oil and gas sector,⁴⁵ and the regime of elections in Nigeria,⁴⁶ they exist in many other legal and regulatory issues in Nigeria.⁴⁷ The preceding session on the judiciary and Local Government Autonomy attests to the existence of uncertainties even within the judiciary’s (Supreme Court) support for LGA autonomy. A deeper reading of the *ratio decidendi* in *AG of Fed v AG of Abia State & Ors*⁴⁸ reveals that the Supreme Court struggled to arrive at that decision affirming Local Government Autonomy. The Supreme Court’s struggle stems from the fact that the CFRN 1999 did a bad job of its quest to guarantee autonomy for LGCs in Nigeria. The lacuna created by the uncertainties in the CFRN 1999 has been exploited by state governments to evade or manipulate LG autonomy in fascinating ways. The uncertainties in the CFRN 1999 are discussed hereinunder:

Power to make laws for LGA: Whereas the CFRN 1999 had provided for a system of local government administered by democratically elected Local Government Councils,⁴⁹ it did not exactly specify whose responsibility it is to ensure democratic governance for LGAs. In its provision guaranteeing a system of local government administered by democratically elected Local Government Councils, the CFRN 1999⁵⁰ conceded to the state governments the authority to ensure the existence of LGCs under a Law which provides for the establishment, structure, composition, finance and functions of LGCs. This authority is only limited by the creation of new States.⁵¹ Again, while authorizing the National Assembly to make provisions for statutory allocation of public revenue to Local Government Councils in the Federation, the CFRN 1999 also authorized State Houses of Assembly to make provisions for statutory allocation of public revenue to Local Government Councils within the State.⁵² These provisions did, perhaps inadvertently, hand down enhanced authority over LGA administration to the state governments.

Joint Account: here is another area of uncertainty. In the CFRN 1999’s prescription for the distribution of the amount standing to the credit of the Federation Account, it provided that the amount standing to the credit of Local Government Councils in the Federation Account

⁴³ That refers to Sec. 162(3) of CFRN 1999

⁴⁴ Per Justice Emmanuel Akomafe Agim, JSC) See pages 28 – 29 of the CTC of the judgment in *AG of Fed v AG of Abia State & Ors. Above*.

⁴⁵ See CV Odoeme “Corporate accountability in the Nigerian oil and gas sector: coping with uncertainties.” (2013) *Commonwealth Law Bulletin* Vol. 39, No. 4, Dec., pages 741 - 765. See also PG Dafiel, CV Odoeme, & DA. Ugwuja, (2025) “Building accountability: legal and ethical compliance in engineering practice with a focus on Nigeria.” *Veritas University Law Journal*, Vol 1, No. 1.

⁴⁶ CV Odoeme, & BAP Folorunso “Constitutional Implications of the 25% Threshold of Votes Cast in the Federal Capital Territory in Presidential Election” (2023) *OMANARP International Journal of Law*. Vol. 1, Issue 2, Pages 32-40, May. See also CV Odoeme, DA Ugwuja & CS Onah “Medical Error Litigation in Nigeria: A Proposal for Change” (2023) *Journal of Legal Medicine*, DOI: 10.1080/01947648.2023.2238564

⁴⁷ See CV Odoeme “NOSDRA and the challenges of management of oil spillage in the Niger-Delta” *Commercial and Industrial Law Journal (CILJ), Faculty of Law, Kogi State University* (2012-2013) Vol. 3 No 2, p 105 – 117

⁴⁸ (2024) LPELR-62576(SC)

⁴⁹ Sec.7(1) CFRN 1999

⁵⁰ See Sec.7(1) CFRN 1999

⁵¹ Sec. 8 CFRN 1999

⁵² Sec.7(6)(b) CFRN 1999

be allocated to the States.⁵³ Consequently, the CFRN 1999 mandated each State to maintain a “State Joint Local Government Account” into which all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State shall be paid.⁵⁴ The CFRN 1999 was, however, silent on the operations, e.g., signatories to the account. Although a joint account, only the state governments are signatories to the account to the exclusion of the joint owners of the account, the LGCs. Consequently, only state governments know the exact amounts standing to the credit of the account owners and have the right to disburse the same at will. The CFRN 1999 omission to create separate accounts for the LGCs or howsoever provide for the remittance of the amounts due to the LGCs from the federation account directly to them is grave. Having failed to isolate LGCs allocations, the state governments have legitimately assumed, appropriated and extended their CFRN 1999 responsibilities to the LGCs.

Mandate to state governments to pay LGAs: In the CFRN 1999’s mandate to state governments to pay the LGCs amounts standing to their credit in the federation account lies another uncertainty. The CFRN 1999’s mandate to the state governments on the payment of sums due to the LGCs from the “State Joint Local Government Account” is to pay to the LGCs in their area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.⁵⁵ Incidentally, the CFRN 1999 granted the States Houses of Assembly the authority to decide the terms and manner of the distribution among LGCs of the state the amount standing to the credit of LGCs of a State.⁵⁶ The state governments have exhibited a preference for the latter and operate within that framework.

Use of the term “such proportion,” “terms” and “such manner”: The use of the term “such proportion,” “terms” and “such manner”⁵⁷ in the description of the amount the state government should pay the LGCs from its total revenue presents another uncertainty. The uncertainty lies in the fact that the National Assembly and the State Assembly have the same constitutional authority over the same subject. While the former has the responsibility to prescribe the proportion, terms and manner of payment from the total revenue of the state to the LGCs,⁵⁸ the latter has the responsibility to prescribe the terms and manner of the distribution among LGCs of the state.⁵⁹ A combined reading of sections 162 (7) and 162 (8) of the CFRN 1999 leaves unfettered discretion for the state governments to distribute their total revenue among LGCs at will. This uncertainty appears to have been resolved in favour of the latter. The state governments have exhibited a preference for the Terms and Manner of distribution of the total revenue of the state among LGCs prescribed by the latter and operate within that framework.

Definition of Total Revenue: the definition of the “total revenue” from which the state governments are to pay the LGCs presents another uncertainty. The fact is that the said “total revenue” is an aggregation of the State and her LGAs allocations from the Federation Account and moneys accruing from internally generated revenue by the Government of the State.⁶⁰ This

⁵³ for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly - see Sec. 162 (5) CFRN 1999

⁵⁴ Sec. 162 (6) CFRN 1999

⁵⁵ Sec. 162 (7) CFRN 1999

⁵⁶ Sec. 162 (8) CFRN 1999

⁵⁷ Sec. 162 (7) CFRN 1999

⁵⁸ Sec. 162 (7) CFRN 1999

⁵⁹ Sec. 162 (8) CFRN 1999

⁶⁰ Sec. 162 (6) CFRN 1999

leaves unfettered room for the states' governments to operate without exactly contravening the CFRN 1999.

Exploitation of the Lacuna in the CFRN 1999

As can be inferred from their argument before the Supreme Court in *AG of Fed v AG of Abia State & Ors*,⁶¹ State Governments concede to autonomy for the LGCs but implement LGC autonomy in fascinating ways, operating on the chasm, cracks and fringes of the CFRN 1999. State governments have continually exploited the uncertainties and lacunae in the CFRN 1999. This proposition is made evident in the events leading to the enactment of the Anambra State Local Government Administration Law 2024 (ASLGAL 2024).

The Governor of Anambra State whittled down his dismissal of absolute autonomy for LGAs in Nigeria, after describing it as an impossibility and a recipe for “humongous chaos,” with the words “if the process is not well planned.” Whence his enactment of the Anambra State Local Government Administration Law 2024. He opined that the aim of the “ASLGAL 2024” was to give operational life to the Supreme Court Judgment on LG autonomy,⁶² noting that the ASLGAL 2024 became imperative since neither the CFRN 1999 nor the Supreme Court Judgment on LG autonomy⁶³ prescribed the manner of appropriation, expenditure, and audit/accountability for Local Government funds. He noted that the ASLGAL 2024 was enacted pursuant to section 7 of the CFRN 1999 and in furtherance of section 162(6) of CFRN 1999’s directive for the establishment of a State Joint Local Government Account into which all allocations from the Federation to all LGs in Anambra State shall be paid.

The issue here is that whereas the ASLGAL 2024 was seemingly legitimately enacted pursuant to section 7 of the CFRN 1999 and in furtherance of section 162(6) of CFRN 1999, it is an overreaching exercise in constitutionality. This is based on the fact that there is neither jurisprudence nor provision known to law under which any law, including a state law, could give life to the Constitution of a Federal State. In this circumstance, it is an aberration to concede that ASLGAL 2024 could give life to the CFRN 1999. Nonetheless, the problem of attempting to give life to the CFRN 1999 stems from inherent uncertainties relating to the subject of LG autonomy in the CFRN 1999. The sad reality is that it is the State Assembly that was vested with the right to prescribe the terms and manner of the distribution among LGCs of the State of the amount standing to the credit of LGCs of a State.⁶⁴ The bigger issue is that the said ASLGAL 2024 is still in operation. Its consistency with CFRN 1999 is yet to be tested. The chances of it becoming an issue for litigation are very high. The uncertainties remain active.

Indeterminacy of the Issue of LGA Autonomy

As observed by the Supreme Court in *AG of Fed v AG of Abia State & Ors*,⁶⁵ a long line of cases such as *Ajuwon v Gov. of Oyo State*,⁶⁶ *Gov. of Ekiti State v Olubunmo*,⁶⁷ *Eze v Gov. of Abia State & Ors*,⁶⁸ and *Friday v Governor of Ondo State*,⁶⁹ have settled the matter of LGC autonomy by their individual and collective affirmation that, by virtue of sections 1(2) and 7(1) of the CFRN 1999,

⁶¹ (2024) LPELR-62576(SC)

⁶² “Soludo signs Anambra LG Law” (15th October 2024). Available at:< <https://punchng.com/soludo-signs-anambra-lg-law-says-absolute-lg-autonomy-would-create-chaos/>> (Last accessed January 2026)

⁶³ *AG of Fed v AG of Abia State & Ors* (2024) LPELR-62576(SC)

⁶⁴ Sec. 162 (8) CFRN 1999

⁶⁵ Above

⁶⁶ (2021) LPELR-55339(SC)

⁶⁷ (2017) 13 NWLR (Pt.1551) 7

⁶⁸ (2014) 14 NWLR (Pt.1426) 192

⁶⁹ (2022) 16 NWLR (pt.1857) 585 at 648 SC

Local Government must be run by democratically elected Local Government Councils and no other body.

Interestingly, if that is truly the case that *Ajuwon v Gov. of Oyo State*,⁷⁰ *Gov. of Ekiti State v Olubunmo*,⁷¹ *Eze v Gov. of Abia State & Ors*,⁷² and *Friday v Governor of Ondo State*⁷³ have settled the matter of LGC autonomy; the issue of LGC autonomy would not have trumped up in *AG of Fed v AG of Abia State & Ors* itself;⁷⁴ and would not have remained a burning constitutional question.

In the answer to the question as to whether the Supreme Court judgment can truly cure or amend the uncertainties inherent in the CFRN 1999, lies the truth. Essentially, courts' judgments on statutory matters are actually interpretations of the unclear provisions of the statute in question. Although the Supreme Court is a policy court and the apex of courts, apart from the *perceived* finality of its judgment, its judgments are of no greater effect than the uncontested judgments of other courts. It does neither cure nor amend the provisions of any law. This position is made obvious by the unfortunate recent development of litigants approaching the Supreme Court for the interpretation of its judgment. A development that stems from inconsistency in judgment and/or the penchant to deliver judgments requiring further interpretation, i.e., judgments that leave litigants and others bewildered as to what the court decided in a matter of interest. Again, the Supreme Court has had cause to overturn its judgments on certain occasions. The fact remains that as long as the contested provisions of a law remain in the books, it leaves room for questioning, particularly on appeals.

However, if the provisions of the law do not leave any room for interpretation or manipulation, or have been amended by the appropriate authority, upon discovery of a lacuna, there will be no justification or active room to legitimately question or successfully contest that provision of the law.

The contestation will never cease until the CFRN 1999 is amended to clear the uncertainties about its intendment for local government autonomy. Until then, the issues surrounding local government autonomy will persist, and the courts will continually be faced with the same questions dressed in similar or different robes, such as appeals, judicial review, case stated, or in fresh suits on the subject.

Conclusion

It is certain that Local Government autonomy is consistent with the federal structure of government in Nigeria. It is also certain that the CFRN 1999 intended autonomy and sustainability for the LGCs in Nigeria when it declared LGCs as the third tier of government of the federation, provided for the administration of LGCs by only democratically elected officials, and included the LGCs among the list of governments to benefit from the amount standing to the credit of the Federation Account, independent of the Federal and State Governments.

However, the CFRN 1999's prescription for the allocation of the amount standing to the credit of LGCs in the Federation Account to the State Governments; conceding to the states governments the authority to ensure the existence of LGCs under a Law which provides for the establishment, structure, composition, finance and functions of LGCs; granting the States Houses of Assembly the authority to decide the terms and manner of the distribution among LGCs of the state the amount standing to the credit of LGCs of a State are obvious detractions creating uncertainties as to the intendment of the CFRN 1999 with regards to LG autonomy. Increasingly, State Governments have exploited these uncertainties to disparage the CFRN 1999, the

⁷⁰ (2021) LPELR-55339(SC)

⁷¹ (2017) 13 NWLR (Pt.1551) 7

⁷² (2014) 14 NWLR (Pt.1426) 192

⁷³ (2022) 16 NWLR (pt.1857) 585 at 648 SC

⁷⁴ Above

federal structure of government in Nigeria and “the detriment of the LGCs to the point that allowing status quo to remain may see to the absolute dysfunctionality of the LG system in Nigeria.”⁷⁵

For the reasons given by the Supreme Court in *AG of Fed v AG of Abia State & Ors*;⁷⁶ and for the reasons of the desirability and the political expedience in extending political governance to the grassroots, being an essential element of federal democracy; and for the reason of state governments' misapplication of LGC funds; LGC autonomy is unarguably expedient. However, for the reasons of the uncertainties in the CFRN 1999, particularly that inherent in sections 162 (7 & 8), the desire for LGC autonomy would continue to be elusive.

It is obvious that the list of cases (*AG of Fed v AG of Abia State & Ors*,⁷⁷ a long line of cases such as *Ajuwon v Gov. of Oyo State*,⁷⁸ *Gov. of Ekiti State v Olubunmo*,⁷⁹ *Eze v Gov. of Abia State & Ors*,⁸⁰ and *Friday v Governor of Ondo State*⁸¹) relied upon by the Supreme Court in her judgment in *AG of Fed v AG of Abia State & Ors*⁸² and her judgment in *AG of Fed v AG of Abia State & Ors*⁸³ itself, have not settled the matter of LGC autonomy as opined by the Supreme Court.

It is also obvious that courts' judgments, including those delivered by the Supreme Court itself on statutory matters, do neither cure nor amend the provisions of any statute. The sad reality is that as long as the contested provisions of a law remain in the books, opportunity exists for questioning same.

To guarantee LG autonomy, assuming without conceding that that is the intendment of the CFRN 1999, and to freeze further contestations on whether or how to operate an autonomous LGC system in Nigeria, it is our earnest recommendation that the CFRN 1999 be amended to clear the uncertainties about its intendment for local government autonomy, i.e., amend the CFRN 9999 to expressly and without equivocation provide for LGC autonomy. The best approach would be to vest the section 7(1) CFRN 1999 authority on the federal government rather than the states governments; delete section 162(8) CFRN 1999 authorizing the States Assembly to prescribe the terms and manner of distribution of funds to LGCs in their states; amend the clause on State Joint Local Government Account (section 162 (5) CFRN 1999) to create a separate account for LGCs, and provide for direct remittance of amounts standing the credit of LGCs in the federation account directly to the LGCs.

And to address the issue raised by the definition of “total revenue” from which the state governments are to pay the LGCs, being an autonomous entity, the LGCs should not partake in State Government revenue. LGCs should have an avenue to raise their own funds in addition to the revenue from the federation account.

Until then, the issue surrounding local government autonomy will persist, and the courts will continually be faced with the same questions dressed in similar or different robes, such as appeals, judicial review, case stated, or in fresh suits on the subject. It is only when the above is done that we can conclusively concede autonomy for LGCs in Nigeria.

⁷⁵ CV Odoeme “Examining the Anambra state local government administration law 2024 in relation to the supreme court decision in *AG of FED v AG of Abia State & Ors*.” (2024) *A Journal of Contemporary Legal Issues*, Vol, 16, page 129 - 153

⁷⁶ Above

⁷⁷ Above

⁷⁸ Above

⁷⁹ Above

⁸⁰ Above

⁸¹ Above

⁸² Above

⁸³ Above