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LOCAL GOVERNMENT AUTONOMY, FISCAL ALLOCATION AND THE FUTURE OF FEDERALISM IN NIGERIA: DECONSTRUCTING AND RESETTING THE BOUNDARIES

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ABSTRACT
The celebrated Supreme Court decision in AGF v AG (Abia) & 35 Ors occasioned a paradigm shift on the convoluted question of local government autonomy vis-à-vis fiscal federalism in Nigeria. However, notwithstanding the judicial directive for direct funds allocation to the local governments, the transition from the old to the new order has been met with resistance by the State Governors through chicaneries which are precipitating political and legal uncertainties across the polity. There is also the concomitant and vexed issue of local government tenure the instrumentality of which Governors have deployed to further constrict the system and control the functionaries at that level. This paper interrogates these issues, adumbrating the evolving legal landscape of the local government system in Nigeria. It deconstructs and resets the boundaries of state legislative and executive powers and the operational – especially fiscal – independence of local government. The paper accosts such issues as the locus standi of States and Federal Governments to sue on behalf of local governments and the surreptitious use of unelected bodies, outlawed by the Constitution, to run local governments. It revisited the functions of local governments, especially the collaborative functions of Sates and Local Governments, identifying some implementation schism and hiatus. It also found that the failure to protect the tenure of Councils constitutionally and incorporate traditional rulers in local governance are parts of the existing gaps. The paper concludes that beyond ad hoc judicial activism and legislative intervention, what is needed is a conscious introduction of categorical constitutional provisions that will permanently rescue the local governments from the States' meddlesomeness and advance the frontiers of constitutionalism at that tier of government.

KEY WORDS: *Autonomy, Constitutionalism, Federalism, Function, Judicial Activism, Locus Standi, Tenure.*

INTRODUCTION

Local governments[1] are constitutionally recognized as the third tier of government in Nigeria[2]. Although S. 7 of the Constitution would appear to have located the LGs under the States, there are ambiguities, if not outright contradictions. The States make up the Federation[3] much in the same way as the LGs make up each of the States[4]. The National Assembly does not however legislate for the States, but for the Federation[5]. The States legislate for themselves within the areas of their competence[6]. However, with regards to the LGs, the Constitution provides that –

> The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the government of every State shall, subject to section 8 of this Constitution, ensure their existence under a law which provides for their establishment, structure, composition, finance and functions of such councils[7].

Thus, the States can make laws to create (establish) LGs, provide for the kind of structure the LGs should have, their composition, finances and functions. Given this encompassing "suzerainty" of States over LGs, the State Governors, with some acquired sense of conceitedness, proceeded to appropriate, or, to be more apt, expropriate anything or everything belonging to the LGs, except those they permit. Beside the enormous powers thus conferred on the States by the Constitution, a major conduit through the States undertook such expropriation was the Constitutional provision that –

> Each State shall maintain a special account to be called "the State Joint Local Government Account" into which shall be paid all allocations to the local government councils of the State from the Federation Account and from the Government of the State[8].

[1] *Let it be stated at once that local governments and local government councils are used interchangeably and synonymously, as the Constitution itself does. They are also simply referred to as LG or LGC or Councils.*
[2] *SS. 3 (6), 7, 8 (3), 162, 297 and Schedule 4 to the Constitution, amongst others, bear this out.*
[3] *SS. 2 (2) & 3 (1)*
[4] *S.3 (6) & Part 1 of the Third Schedule to the Constitution.*
[5] *S. 4 (1) – (4)*
[6] *S. 4 (6) – (7)*
[7] *S. 7 (1)*
[8] *S.162(6). It should be noted that sub section (1) of the same section establishes "the Federation Account into which shall be paid all revenues collected by the Government of the Federation…"*

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The wording of the subsection shows that it is the State, not the LG, that shall open such account. Indeed, the Constitution goes on to direct the State, that –

> The amount standing to the credit of the local government councils of a State shall be distributed among the local government councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State[9].

Given that most LGs rely and survive on allocation – not on internally generated revenue – their control by the State through the constitutional routes set out above was complete and nation-wide.

In response to this gubernatorial practice, the civilian administrations of Presidents Olusegun Obasanjo and Muhammadu Buhari tried to allocate money directly to the LGs, but were successfully resisted by the State Governors. Indeed, President Buhari went further to issue **Executive Order 10**[10] to enforce financial autonomy for State Legislature and Judiciary as well as the LGs[11]. Under the aegis of the Nigeria's Governors Forum, the Governors resisted this Order citing constitutional provisions. They subsequently went to court. In ***AG of the 36 States v AGF***[12], the Supreme Court by a 6 – 1 majority judgement annulled Executive Order 10, enabling the Governors to re-enact and perpetrate their over-lordship. Consequently, the extant administration of President Bola Ahmed Tinubu went to court. In ***AGF v AG (Abia) & 35 Ors***[13], the Supreme Court directed the allocation of revenue directly to the LGs, annulling S.162 (6) of the Constitution[14].

The euphoria that greeted the judicial activism that wrought this great constitutional construct had not died down when the reality began to manifest; that firstly, the Governors were not in a hurry to comply and those who did, were perfunctory in approach; secondly that they were developing other schemes and strategies through which LG funds could still be managed by the State; and finally, that direct allocation did not amount to fiscal federalism, much less LG autonomy. One of the issues the Governors have raised is the locus standi of the Federal Government to sue on behalf of the LGs as they argue that having regard to S.7, the State Houses of Assembly have the competence to legislate for the LGs[15].

How did we get here? LGs were originally subjects of the Central Government, thereafter they came under the Regional and now the State Governments. Was this transition designed to bolster or imperil the LG system?

Status Local of Local Governments in Colonial Nigeria.

Colonial administration in Nigeria, especially at the local level – under the Native Authority system – was "in reality, nothing more than the well-conceived, previously rehearsed, but carefully camouflaged, arbitrary, whimsical and capricious exercise of might by the suzerain in pursuit of economic opportunism or political expansionism"[16]. This view is underscored by the stand of Lord Lugard, the Colonial Governor-General of Nigeria, who wrote that –

> The task of the administrative officer is to clothe his principles in the garb of evolution; to make it apparent alike to the educated native, the conservative Moslem, and the primitive pagan, each in his own degree, that the policy of government is not antagonistic but progressive – sympathetic to his aspirations and the guardian of his natural rights[17].

It should be borne in mind that Nigeria upon amalgamation, started as a unitary State; thus, at this time, there were no regions or states, but only the central administrations and variegated local authorities. However, by 1939[18], some form of administrative authority, by way of devolution, crystalized in Ibadan, Kaduna and Enugu which were called administrations but later became Regional Governments in 1946[19]; that is, Western (Ibadan), Northern (Kaduna) and Eastern (Enugu) Regions/Regional Governments, respectively.

The Native Authorities served as Government revenue agents and later also as revenue collectors for themselves and their rulers. Large cities were divided into wards, not for electoral purposes but for purposes of control and taxation[20]. This indirect way of running the Country through the natives did not amount to "….having two sets of rulers – the British and the natives – working either separately or in cooperation, but a single government in which the native chiefs have clearly defined duties and an acknowledged status equally with the British official"[21]. This impression created by Lugard that the chiefs had an acknowledged status was rejected by Sa'ad Abubakar who argued

9 *S. 162(8)*
10 *Signed into force on the 22/05/2020*
11 *The President based his action on his constitutional (executive) powers under S.5 and on the 4th Alteration Act (to the Constitution), 2017.*
12 *(2022) SC/CV/655/2020*
13 *(2024) LPELR – 62525 (SC).*
14 *It is recommended that at the earliest opportunity, the Constitution should be amended to reflect the new position.*
15 *i. Alafia, "Implications of the Supreme Court ruling on the LG Financial Autonomy in Nigeria: Challenges and Prospects" (2025) 12 (3) Researchjournal's Journal of Public Policy 15*
16 *U. E. Okolocha, The Place of Local Government Under the Nigerian Constitution, Ph.D Thesis, Igbinedion University, Okada, 2011, P.114*
17 *F. D. Lugard, The Dual Mandate in British Tropical Africa, 5th edn, Frank Cass & Co., Abingdon, 1965, P. 194*
18 *Under Sir Bernard Bourdillon as Governor of Nigeria (1935 – 1940)*
19 *Under the Sir Arthur Richards Constitution of that year.*
20 *Lugard (n17) P.200*
21 *F. D. Lugard, "Instruments to Political and other Officers on Subjects Chiefly Political and Administrative", Political Memoranda, 1906, P.191.*

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that in actual fact, the Emirs were transformed into mere agents of the British[22]. He emphasized that –

> The Emirs became mere civil servants – salaried staff of the Native Authorities supervising tax drives, assessment and collections. They played no role in the policy-making organ of the colonial government but only implemented what had been directed by the administration[23].

Lugard was however committed to his principles and programmes, which he steadily adapted and extended to the Southern Provinces. He introduced the Native Authorities Ordinance in 1916 which dealt more with executive matters[24]. The considerable success he achieved using the emirate traditions in the North buoyed the extension of his indirect rule principles to the Western Province where he recorded limited success and the Eastern Province where the creation of Warrant Chiefs to play similar roles was resisted. Afigbo says –

> That there was no difficulty in finding the personage for use in the native Administration along the trading coasts, but not so in the interior. Where the people were consulted, they more often than not misunderstood the purpose of the request and pushed forward as their chiefs people who had no special status in the traditional society. Communities which thought that those they presented would be killed or sold into slavery presented slaves or criminals or never-do-wells as their chiefs, while others who thought the white men needed messengers sent able young men…"[25]

These were the warrant or warranted chiefs (who were issued with warrants), as different from other classes of "minor chiefs" or "headmen". The warrant chiefs were constituted into some multi-purpose body: as a court, an executive body and a legislative body for the area it covered. When it met at the district headquarters with the political officer presiding, it became the Native Council.

In the Lagos Colony itself, the desire to reach the subject population and facilitate the cooperation with government led to the creation of Native Councils[26], including the Central Native Council of Lagos which replaced the Native Advisory Board of 1897[27]. The Central Native Council was generally presided over by district Commissioners with traditional white cap chiefs of Lagos and few other titled and native chiefs as nominated members[28].

Elsewhere in Yoruba land, the "Travelling Commissioner" posted Policemen to oversee big towns. Also, a stipendiary chieftaincy was devised which led to the ascendancy of Seriki Abbas, an Egbado merchant and Moslem Leader based in Badagry. He acted as "Paramount Chief" for the entire district around 1904 – 1919.

Provincial Administrations

The Constitutions of 1960 and 1963[29] did not provide for local governments. However, the Constitutions of the Regions[30] provided for Provincial Administrations[31]. The three Regional Constitutions had similar provisions for Provincial Administrations in their respective Regions[32].

Using the Constitution of Northern Nigeria for illustration, it is to be noted that –

1. The Governor appointed the Provincial Administration by instrument in writing[33]. This responsibility for LG administration is now provided for in the LG law of each State made by the House of Assembly of the State[34].
2. The functions of the Provincial Administration were prescribed by the Governor or by any law in force in the Region[35].
3. Composition of the Provincial Administration was:
   (a) The Provincial Administrator (Chairman of the Provincial Authority)[36].
   (b) Other members of the Provincial Authority to be appointed at the Governor's discretion[37].
   (c) A Provincial Council which shall consist of such members as may be prescribed by the Governor[38].

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22 S. Abubakar, "The Northern Provinces Under Colonial Rule (1900 – 1959)" in Groundwork of Nigerian History, O. O.Ikime (Ed.), Heinemann, Ibadan, 2001, P. 451

23 Ibid, 476 -477

24 He had introduced the Native Revenue Proclamation in 1907.

25 A. E. Afigbo, "Eastern Provinces Under Colonial Rule" in Groundwork of Nigerian History, O. Ikime (Ed.) Heinemann, Ibadan, P.410 at 417.

26 Under the Native Ordinance of 1901.

27 This Advisory Board had been created by Governor William McCallum to replace the Agent for Native Affairs created in 1895.

28 T. N. Tamuno, The Evolution of Nigerian State: The Southern Phase 1899 – 1914, Longman, Lond. 1972, Chap. 5.

29 This writer continues to hold the view that there was no 1963 Constitution (aka Republican Constitution). What Nigeria had in 1963 was the 1960 Constitution (as) amended in 1963.

30 At independence, Nigeria's 3 Regions had their different Constitutions while the Constitution of the Federation (1960) or of the Federal Republic (1963) was for the whole Country. When Midwest Region was created in 1963, it also had its own Constitution.

31 These provincial administrations could be regarded as the precursors of the modern local governments.

32 See SS 73, 74 and 77 of the Western, Northern and Eastern Regional Constitutions, respectively.

33 S. 74(1), Constitution of Northern Nigeria.

34 S.7(1) of the 1999 Constitution.

35 S. 74(2) of the Constitution of Northern Nigeria. Now provided for under S.7(1) and Schedule 4 to the 1999 Constitution.

36 S. 74(2)(a) of the Constitution of Northern Nigeria

37 S. 74(2)(b) of the Constitution of Northern Nigeria

38 S. 74(2)(c) of the Constitution of Northern Nigeria. This approximates the Legislative Council (ie the LG legislature) under the extant LG system, the composition of which is also provided under S.7(1).

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The establishment of additional provinces or provincial administration was as also provided for in the Regional Constitution[39].

By 1963, the structure of the emerging Nigerian nation had started to de-emphasize the provincial tier for Divisions and Districts under States that replaced the Regions from 1967[40]. It is also important to point out that provinces could, in federalist discourses, be component parts (federating units) of a federation[41]. They could also be internal tiers within a region or state[42] in which sense they could be seen as local administrations or governments[43].

Checkered Experimentations and the 1976 Reforms

Following the regionalization of Nigeria in 1946, the question of administration of the lower tier of government came to the fore. In his circular letter to the Colonies, Sir Arthur Creech-Jones, emphasized the development and modernization of local administration. He stated that "…local government machinery is required for the administration of plans for progress in the economic and social fields, while an outlet is required for the growing consciousness of the ordinary people. For these purposes, the unmodified traditional machinery is inadequate; and wherever possible, it must be adapted to the new needs of local government administration"[44]. Consequently, the new Regions were empowered to superintend over the existing and emerging local governments.

In the Eastern Region, the Native Ordinance of 1933 was replaced by the Eastern Nigerian Local Government Law of 1955 which established 17 County Councils, 1 Municipal Council, 59 District Councils, 11 Independent District Councils, & Urban District Councils, and 1 Independent County Council. It also had provisions for the establishment of municipalities for large towns[45].

The Western Nigeria Local Government Law of 1958[46] streamlined the regional local authorities into three. It established 22 Divisional Councils, 104 District and 100 Local Councils.

In the Northern Region, the Native Authority Law of 1954 created five types of Native Authorities, as follows:

i. A Chief or Other Person-In-Council appointed by the Premier;
ii. A Chief or other Person-And-Council appointed by the Premier;
iii. A Council appointed by the Minister for Local Government;
iv. A Group of Persons Appointed by the Minister of Local Government; and
v. A Chief or Other Person appointed by the Premier.

According to Dr. T.O. Elias –

> By the middle of 1962, there were 39 Native Authorities constituted as Chiefs-In-Council and 11 as Chiefs-And-Council. By 1965, some 120 Native Authorities and about half that number of Treasuries had been established in Northern Nigeria[47].

The 1976 Reforms

As can be seen, the multi-tier LG system was in place in all the Regions. It should however be noted that in all these, the legislature had very minimal role, if it was not totally absent. The power over LGs was vested in the executive – the Premier, the Minister/Commissioner for LG.

Commenting on the variegated LG systems in the Regions, Prof. Adebayo Adedeji said –

> Between 1950 and 1975, each Region or State carried out re-organizations of its local system in the way it deemed fit, since in the Nigerian federal system, local government remains a State matter. Accordingly, several systems (and streams/strata) of LGs were created, abolished and replaced as need, whims and/or caprices demand[48].

As was the case before 1946 when the Central Government legislated for the Native Authorities, the Federal Government re-entered directly into the field of local governance in 1976, introducing pervasive changes culminating in the single tier unified LG system. These reforms followed the Ibrahim Dasuki Panel's Report[49]. It brought reforms on a nation-wide scale that were uniform in application, and also unified the various structures into one, hence the nomenclature Unified LG System. The Government abolished the provincial and divisional authorities and recognized for the first time the LG as the third

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[39] S. 74(3) of the Constitution of Northern Nigeria. It is important to point out here that while S.7(1) of the 1999 Constitution provides for the Establishment of Councils, S.8(3) of the same Constitution provides for the creation new LG area. Both are however done by the House of Assembly.

[40] That was when Lt. Col. (later Gen.) Gowon created 12 States out of the 4 Regions in Nigeria.

[41] Like the situation in Switzerland

[42] Like the situation in Germany

[43] As it is (or has become) in Nigeria.

[44] Circular letter dated February 25, 1947.

[45] Most of the Councils were differentiated by size, population and urban/rural categorization and social stratification.

[46] Came into effect in 1955

[47] T. O. Elias, Nigeria: The Development of its Laws and the Constitution, 1967, P.72

[48] A. Adedeji, "Renewal of the Search for Systems of LG that can serve the Common Good", in People-Centered Democracy in Nigeria. Heinemann, 2000, P. 7.

[49] Alh. Ibrahim Dasuki (who later became – and was also later dethroned as – Sultan of Sokoto) was the Chairman of the national panel on LG Reforms, appointed by the late Head of State, Gen. Murtala Mohammed, in 1975.

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tier of government in Nigeria[50], creating 299 of such governments. Under this unified LG system, the States lost control over LGs, and for the LGs to survive on their own, the Federal Government provided financial support directly to them. It also wrote off all debts the LGs owed the State Governments and also provided for annual subvention for LG to be contributed by both the Federal and State Governments[51].

Further Reforms by the Military

Between 1976 and 1979, the Federal Military Government further tinkered with the LG system in diverse areas. It created additional 148 LGAs in 1989, 140 in 1991 and 179 in 1999 bringing the number to 768 in addition to the 6 Area Councils in the Federal Capital Territory, bring the total to 774 – which is the current number.

The Federal Government also attempted to reintroduce the multi-tier structure of LGs in Nigeria. It prescribed that "the government of a State may, by Edict or Law, create for any LGA in its area, up to a maximum of 7 Development Areas[52], having regard to such factors as common historical and traditional ties, geographical contiguity and administrative expedience[53]. The National Electoral Commission was also mandated to "divide each LGA into such number of wards, not being more than 20, as the circumstance of each LGA may require[54].

Under the 1989 (unpromulgated) Constitution[55], there was a mayoralty in the Federal Capital Territory (FCT), comprising 4 Area Councils. Indeed, on the 8th December, 1990, a LG election took place which produced 4 Deputy Mayors (ie Council Chairmen) and 4 Vice Mayors (ie Council Vice Chairmen). There were also Councilors for the respective Councils. The FCT Minister performed the functions of the mayor. This experiment was however discontinued with the change of government which also witnessed the collapse of that Constitution.

Although DN15 of 1989 attempted to extend presidentialism to the LG level, it did not separate the supervisory councilors[56] from the legislative council. It provided that each LGA shall have "not less than 3 and not more than 5 offices of supervisory councilors[57]...from among the councilors of that LGC"[58]. Two years later, in 1991, the Government amended the Decree to provide that "there shall be not less than 3 nor more than 5 offices of supervisor…"[59]. The new amendment law went further to provide that the chairman "shall appoint persons not being elected councilors, to hold offices as supervisors"[60]. Thus, banning elected councilors from holding offices as councilors; marking the effective commencement of separation of powers and the institution of checks and balances at that level. It also marked the commencement of presidentialism thereof.

Separation of powers at all levels does not tantamount to water tight compartmentalization of the organs of government and their duties. There are always institutional linkages between the organs, especially between the legislative and executive organs. Thus, the Decree provided that the chairman shall appoint the Secretary[61] to the LG who "shall service the meetings of the Chairman and the Councilors….."[62]

The 1995 Constitution which, like that of 1989, was not promulgated into force, also introduced few changes to the LG system. An example is where the 1989 Constitution restricted the number of development areas a State could create to a maximum of 7. The 1995 Constitution removed that upper limit[63]. The military also restructured the LG in the area of number. Many State Governors during the second republic created various numbers of LG across the country, taking the number to 900. In 1984 the Federal Military Government[64] brought that number down to 301, arguing that most of them were mushroom governments that were not viable.

On the Vexed Issue of Tenure

Although the Constitution guarantees that the LG system must be democratically elected LGCs, it provided further the LG law of each State should provide for the Establishment, Structure, Composition, Finance and Functions of the LGs. It however omitted the important element of Tenure. Presumably, the power to establish should necessarily connote a concomitant power to prescribe tenure for the LGCs so established. But the Constitution gave similar power with respect to functions, yet it went further

50 *This was announced by Brig. Shehu Musa Yar'Adua, Chief of Staff, Supreme Headquarters.*
51 *See also S. 162 of the 1999 Constitution on similar LGA funding.*
52 *S. 1(4) of Local Government (Basic Constitutional and Transitional Provisions) Decree (No. 15) of 1989. Also see S.7 (3) of the (unpromulgated) 1989 Constitution. This provision was not however incorporated into the 1999 Constitution, save for the provisions of S.8(3). But some States have through their LG Laws, restructured their LGAs. See, for eg the 37 LDCs in Lagos.*
53 *Some of these elements were later incorporated into the 1979 – and re-enacted into the – 1999 Constitution.*
54 *S. 3(1) of DN 15 of 1989. The "federal wards" in many LGAs are less than 20. However, some States have created "state wards" to increase the number.*
55 *S. 315*
56 *In a parliamentary fashion, councilors appointed to head LGA Departments were called supervisory councilors.*
57 *S. 21(1) of DN 15 of 1989.*
58 *S. 21(2) of DN 15 of 1989.*
59 *Vide S.22(1) of Local Government (Basic Constitutional and Transitional Provisionals) (Amendment) Decree (No. 10) of 1992, that took effect in 1991. Underline provided for emphasis*
60 *Ibid. S. 22(2)*
61 *Ibid. S. 22(5). The SLG was previously an appointee of the States LG Service Commission, posted to each LGA.*
62 *The SLG thus became a lawful institutional linkage between both organs.*
63 *S. 7(2) of the 1995 Constitution (unpromulgated).*
64 *Under Gen. Muhammadu B**uhari.***

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to copiously prescribe LG Functions in Schedule 4. Be that as it is, it is not surprising that State LG Laws provide for tenure and/or term of office ostensibly to fill the gap. But that is where the problem also comes from; tenure fixing has become an instrument of control over the Councils. Certainty is a cardinal principle of law. Many LG Laws are made and amended so frequently that the operators themselves find it difficult to follow, enforce or comply with. For example, the Edo State Local Government Law, 2000, was amended 6 times in 6 years, changing the rules and tenure while persons had been elected into office. Indeed, State LG Laws are constantly and easily amended, usually at the behest of Governors, to meet whatever exigency.

Removal (impeachment), suspension from office or dissolution of LGCs or adjustment of terms of office, are all ingredients of tenure of office. Besides fiscal independence, these are at the heart of LG autonomy. In ***Njaba LGC v Chigozie***[65] the Court of Appeal held that the tenure of 3 years provided under the Imo State LG Law[66] should start to count from the date the Chairman took his oath of office. In ***AG(Plateau State) v Goyol*** [67], the Court of Appeal dealt with the issue of premature dissolution of LGCs when the Court, Per Akaahs, JCA, held *inter alia* that –

> …the House of Assembly has no power to make any law giving the Governor power to truncate democratically elected LGC. This explains the rationale which preserves the tenure of a LGC when the Law under which the LGC [was elected] has been amended or repealed…The penchant by State Governors in dissolving LGCs is clearly undemocratic. It is only when a State of Emergency has been declared that can warrant the suspension of democratic institutions in the polity[68]

The above notwithstanding, the State Governors and Legislators who, especially on LGC matters, constantly act together, still control the councils through the instrumentality of tenure. In Speaker, ***KSHA v Adegbe***[69], the Court of Appeal perused the Kogi State LG Amendment Law, 2003 and held that the House of Assembly was empowered to, by a resolution passed with simple majority, suspend a chairman or vice chairman[70]. However, the Supreme Court has in **Eze v Governor of Abia State**[71], asserted in no equivocal terms, that "dissolving LGCs …amounts to executive recklessness for the 1st respondent to remove from office democratically elected Chairman and Councilors under whatever guise…it is illegal and wrong"[72].

On a salutary note, the trend has reversed. It is now the exception, not the dominant practice, for LGC to be run by appointed bodies by whatever name called. This development is largely traceable to the Supreme Court directive that allocations should not go to unelected councils in ***AGF v AG (Abia) & 35 Ors*** (supra).

On the Functions of Local Governments

It is not just a technical fact that a Military Decree birthed the 1979 Constitution[73] which, for the first time, brought LG into Nigeria's federal Constitution. The Military administered the States through Military Governors who were on postings often times to States other than their States of origin. They were the implementers of federal policies and programmes in the States. The various constitutional provisions on LGs and the arrangements made by the Military (especially from the 1976 reforms) were, under the 1979 and 1999 Constitutions, now to be implemented by elected civilian Governors most of whom with different nuances and political persuasions, and some with partisan divergencies.

S.7(1) mandates the State to by law provide for functions of LGs. S.7(3) gives a duty, not just a directive, to LG to participate in the economic planning of the State and for this reason, the Constitution mandates the State (House of Assembly to enact a law) to establish an Economic Planning Board. S.7(5) provides that the functions to be conferred on LGs (by the States) shall (mandatorily) include those set out in Schedule 4 to the Constitution.

Now, Schedule 4 sets out 11 broad functions for LGs broken into specific duties[74]. S.1(a) of Sch. 4 validates and re-enforces S.7(3) of the Constitution: It mandates the LGs to make recommendations to the Economic Planning Board. Again, to underscore the point that it wants the LG to collaborate with the State Government, S.2 of Sch. 4 provides that "the functions of a LGC shall[75] include participation of such council in the Government of a State…". The operative word here is shall, not may.

It should be noted that Schedule recognizes the power of the State to make law prescribing LG functions. It provides "….such other functions as may be conferred on a LGC by the House of Assembly of the State"[76]. It is contended however that the functions prescribed under Sch. 4 are plenary in nature; exhaustive and yet focal on governance at LG level. Some points are what noting here: (1) State LG Law can only prescribe functions in addition to, and not in subtraction from the functions set out in the Schedule; (2) the Schedule has in a plenary manner substantively and exhaustively provided for LG functions; (3) the only functions the House of Assembly can confer on LGs, under paragraphs (d), must be on ancillary or incidental matters that are

[65] *(2010) 16 NWLR (Pt.1218) 166*
[66] *S.23, Imo State LG Law, No.15 of tear 2000*
[67] *(2007) 16 NWLR (Pt. 1059) 57*
[68] *Supra at pp 94 – 96.*
[69] *(2010) 10 NWLR (Pt. 1201) 45*
[70] *S. 16(1) of Kogi State LG (Amendment) Law, 2003.*
[71] *(2015) 26 WRN 1 at 25*
[72] *Supra per Akaahs, JSC, at pp.31-32*
[73] *Decree No. 25 of 1979.*
[74] *S. 1(a) – (k) of Schedule 4 to the Constitution.*
[75] *Underline provided for emphasis.*
[76] *S.4(2)(d) of Sch. 4*

ejusdem generis to those enumerated under paragraphs (a) – (c); and (4) such functions are minor or of lesser importance to those enumerated because Sch. 4(1) emphatically sets out the "main functions[77] of a LGC". It should also be noted that functions prescribed under Sch.4(2) are functions of the State government in which the LG shall participate. It is in this area, and only in this area, that the House of Assembly can confer functions to LGs, which have to be ancillary in nature.

Furthermore, it would appear that the arrangement at the federal level where there is a National Economic Council[78] which comprises of all the State Governors with the Vice President as Chairman[79], is what the Constitution replicated at the State level in the form of an Economic Planning Board, though the latter has more specific functions while the former is largely advisory. It should be added, nevertheless, that if that is the constitutional intendment, then the Deputy Governor should be the Chairman of such Board[80].

Finally, given the prevalent insecurity across the country, LG Security Council should, where it does not already exist, not only be urgently set up, but be added as a function of the LG under Sch 4 to the Constitution. It should comprise –

i.	The LGA Chairman	Chairman
ii.	The Leader (Speaker) of the Legislative Arm	Member
iii.	The Divisional (or all the Divisional) Police Officer	Member
iv.	The Head DSS in the LGA	Member
v.	The Head of Civil Defense in the LGA	Member
vi.	The Member of House of Assembly from the LGA	Member
vii.	The Civil Commissioner from the LGA	Member
viii.	The State Dep. Governor if he/she is from the LGA	Member
ix.	The State Governor if he/she is from the LGA	Member
x.	The Federal Minister if he/she is from the LGA	Member
xi.	The Member, House of Reps if he/she is from the LGA	Member
xii.	The Senator if he/she is from the LGA	Member
xiii.	The Chairman, LG Traditional Council	Member
xiv.	The Secretary to the LG	Member-Secretary

This Council should meet as frequently as the need arises but not less than once a month, with 50% of its membership as quorum.

Local Government Traditional Council

Traditional rulers were in colonial Nigeria hand in gloves with government functionaries. Where there were not *de facto*, they were at least *de jure*; and this continued to be the case until the fall of the first republic. The military inspired Constitutions of 1979 and 1999 have no place for them. It is to be observed that neither S. 7 nor Sch. 4 to the Constitution mention the place, role or functions of traditional rulers as part of the power architecture at that level of governance. Their council is also not part of the State Executive Bodies provided under the Constitution[81]. However, many – if not all of the – States separately have Traditional Rulers and Chiefs Laws. The Constitution empowers the State House of Assembly to make laws "for the peace, order and good government of the State or any par thereof…[82]" Traditional rulership or chieftaincy matters are neither contained in the Exclusive nor Concurrent Legislative Lists in the Constitution[83]. Therefore, they are residuary matters which, by their peculiar nature, ought to be within the legislative competence of the State Houses of Assembly. This justifies and validates the enactment of Traditional Rulers and Chiefs Laws by various States of the Federation.

What is pertinent at this juncture is to recommend the entrenchment of traditional rulers, in accordance with their categories, in public governance, and for the current purposes, in local governance. To be sure, Local Government Traditional Councils exist in some States, from where resolutions go to the State Traditional Council, if need be. They are however largely advisory and perfunctory.

This paper recommends that –

i. Local Government Traditional Councils be set up where they do not already exist.
ii. Traditional rulers be involved in the governance at the LG level;
iii. The Chairman of the traditional council should be an *ex-officio* member of the local government legislative council;
iv. The Chairman should be a member of the LG Security Council (as already suggested); and
v. Subject to (i) above, the LGC Chairman, should consult the LG Traditional Council on all major policies,

[77] *Underline provided for emphasis.*
[78] *Established under S.153(1)(h)*
[79] *The Governor of the Central Bank is also a member. See S. 18 of the 3rd Sch to the Constitution.*
[80] *It is a matter of great concern that some of the State Governors are not interested in setting up this board notwithstanding that it is constitutionally mandated.*
[81] *S. 197 of the Constitution.*
[82] *S. 4(6) & (7).*
[83] *See Parts 1 & 2 of the Second Schedule to the Constitution.*

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programmes, fiscal measures and initiatives on the administration of the council and governance of the area.

Fiscal Allocation

It is important to recapitulate on the matter of revenue allocation to LGs, and, in particular, fiscal management. It is to be noted that the perceived reluctance of State Governors to comply with the judicial directive of direct allocation to Councils, and to live under that regime, is not entirely selfish[84]. There is a general perception that LG functionaries are notorious for complacency, financial indiscipline and that they are generally perfunctory in the office. Given this background, Governors are entitled to some circumspection – even when they, contrary to the equitable injunction, may not have clean hands.

Nevertheless, to address this, the State local government law should mandate the Council Chairman to publish all revenues allocated and accruing to the Councils every quarter. The Chairman should draw up the Council's budget for the ensuing year by the middle of the current year and pass same through the Council's legislature after consultation with the LG Traditional Council. Thereafter, lay same at the floor of the State House of Assembly through the member representing the LG at the Assembly or the Majority/Minority Leader of the House. The House of Assembly is not to subject the Council's budget to another defense or debate, but for the Assembly to officially note it and mandate its Committee on Local Government (or other appropriate Committee) to oversight the implementation. Again, this oversight is not another avenue for the State to bring the Councils under pressure but strictly to ensure budget performance especially on collaborative programmes. The State LG Law should also mandate the Councilors to do thorough oversight and make infringements impeachable offences. Accordingly, performance benchmarks and timelines should be indicated upon presentation, against which the Assembly should carry ought its oversight. Finally, the entire appropriation process; the initial passage at the Council's legislature, presentation at the Assembly, implementation and oversight should be events open to all; with media coverage and public scrutiny.

CONCLUSION

Nigeria is over-governed, so opined Chief Emeka Anyaoku[85]. With one Federal Government, 36 Sates Governments, a Federal Capital Territory administration, and 774 LGCs[86]. Here are also a multiplicity of Ministries, Departments and Agencies (MDAs) and other governance organs and machineries. More relevantly, a State lie Lagos, created 37 LGAs which were later redesignated Local Development Councils (LGCs)[87]. The LDCs are operating alongside the 20 LGAs in the State which tantamount to a two-tier LG system in the State. This is neither new nor bad in a LG system under a federal federation. To be sure, multiple tiers will involve more participants at the grassroots level. However, it will also multiply the recurrent and overhead votes and reduce available capital votes for development. But that is the cost of running our model of federalism and presidentialism. A heterogeneous state and grossly plural society like Nigeria need it. But rules must be clear, explicit, detailed and comprehensive. Nigeria's Constitution is comparatively voluminous[88] but it should not sacrifice clarity at the alters of brevity. Its provisions at the Federal and State levels are fairly comprehensive. But at the LG level, they are lacking in material areas highlighted above. Thus, the system at that level requires proper deconstruction and resetting as adumbrated herein in order to bolster constitutionalism thereof.

84 A Committee had to be set up with the Governors on how best to implement the new measure.

85 Nigeria's elder statesman, former External Affairs Minister, and former Secretary General of the Commonwealth of Nations.

86 Before the Military struck in December 1983, many States had created additional LGAs, bringing the total number to 900. Bendel State (now Edo and Delta States) created 71 out of the existing 19 LGAs in 1983.

87 These 37 LDCs were originally created as new LGs by the Lagos State Government under Gov. Bola Ahmed Tinubu (now President of Nigeria). But the exercise ran into constitutional quagmire culminating in the celebrated case of AG Lagos v AGF (2003) 12 NWLR Pt 833, 1 SC.

88 India's Constitution is the world's largest with 146,385 words: 440 Articles , 12 Schedules.