RUN LAW JOURNAL

Volume 8, Issue 2, 2025

ARTICLE

CONSTITUTIONAL IMPERATIVES FOR STRENGHTENING LOCAL GOVERNMENT ADMINISTRATION AS FULCRUM FOR ADVANCING CITIZEN'S RIGHTS AND DEMOCRATIC GOVERNANCE IN NIGERIA

Adam Eteete Michael Ph.D,
Charles Okechukwu Oparah Ph.D
Chigoziem Ekeno Solomon Esq.

Abstract
Democracy is the best form of government under which man can be trusted to rule his fellow men. Its practice in a modern state enthrones a constitutionalised system of limited governmental powers, separation of powers, rule of law, checks and balances in the exercise of powers of government and respect for, and enforcement of human rights. Democracy enhances respect for the general will of the governed and thereby secures the enjoyment of citizens' rights. The Nigerian Constitution recognised democratically run local government as ideal, but it concentrated its attention to create democratic structures for the federal and state tiers of government. The need for democratic structure in the administration of local government councils was largely ignored by the constitution drafters. It is the courts that have adopted progressive interpretation to wrest the control of local government councils from imposition by the States and Federal government. The much the courts have done till date is still far from solving the problem of imposition on local government councils and subversion of the general will of the people governed. This paper adopted doctrinal examination of the constitutional and legal provisions touching on administration of local government councils in Nigeria and the views of several writers on the subject and related matters, and concludes that to enthrone full-fledged democratic structures in the local government councils and enable the governed at that level to enjoy citizens' rights, there is need to amend the Constitution of the Federal Republic of Nigeria to establish full constitutional guarantees of democratic structure.

Keywords:Democracy; Citizens' rights; Constitution; Local government administration.

*Adam Etete Michael Ph.D, Professor of Constitutional Law, Dean Faculty of Law, Clifford University, Owerrinta, Ihie Campus, Abia State. Email: teteadam7@gmail.com; Tel.: +234 703 523 4005 and +Charles Okechukwu Oparah Ph.D, Clifford University, Owerrinta, Ihie Campus, Abia State. Tel +234 803 342 5332. Email: cooparah@gmail.com; deojustitialawchambers@hotmail.com ; Lecturer, Clifford University, Owerinta

1.0 Introduction

The absence of democracy in the local government system of administration has been of immense concern in Nigeria since the colonial days. The recent decision of the Supreme Court in Attorney General of the Federation (AGF) v Attorney General of Abia State (AG, Abia)[1] has once more stoked the issue and gladdened the hearts of those who believe that local government councils in Nigeria should be centres of meaningful economic planning and execution of governmental objectives. Local governments should work for the benefit of the people in the local government areas, particularly the rural areas, rather than being reputed to be places where monthly allocations are 'cannibalised' once received, while the chairmen and councilors soon thereafter leave to the urban areas to revel for most of the days of the month, rather than staying back to work out democracy dividends for the people.

Instituting meaningful democracy in the local government system of administration will not only promote the growth of democratic culture from the grassroots, it will ensure that democracy and dividends in the nature of citizens' rights are enjoyed by the people. Unfortunately, Constitution of Federal Republic of Nigeria, 1999(CFRN 1999) provisions relating to political and financial autonomy of local government councils failed to address most of the necessary issues relating to that, leaving the courts to apply judicial means to enhance the democratisation of the system, against the wish of Governors of States to wield selfish control of the local government councils. It is notorious that Governors' political parties or their anointed parties always win all or not less than ninety nine percent of the elective positions in local government councils. The much the courts have done still does not go far enough to democratise the system of local government administration in Nigeria.

This paper examines the way forward in five sections and offers solutions to lack of democratic governance. What has to be done is to replicate the well-known constitutional engineering tools for achieving democratic republicanism in the administration of local government councils and remove all provisions that enable anti-democratic imposition in the system. In doing so, it is quite appreciated that some thinkers are averse to any constitutional solution to governance problems in Nigeria without fashioning an entirely new constitution that has the credentials of

[1](2024) 17 NWLR (Pt. 1966) 1

originating from the people,[2] like the French and United States constitutions. Having such a constitution is ideal, but it is bugged by uncertain political probabilities for its fruition. While this deep-rooted solution is important in order to have a people-oriented constitution in Nigeria, something could still be done to fashion out a better CFRN 1999-as considered in this paper- to achieve a true democratic local government system. This paper thus examines the text of CFRN 1999 and proffers solutions relating to constitutional amendment that will ensure that the local government areas are governed democratically.

2. Relevant Conceptual Perspectives

2.1 Constitution

The constitution of a state is the basic law in which the overriding and fundamental provisions that determine the mode of governance of the state, to be complied with by the government and the governed in the state, are stated. The constitution is thus the fundamental law that gives validity to the operation and conduct of all citizens and officials within the state and to which all rules of law are subject. Wheare defines the constitution as "the whole system of government of a country, the collection of rules of which establish and regulate or govern the government."[3]

It has been suggested that a constitution should contain only legal rules;[4] but it seems that such a restriction is not necessary or compelling, since a constitution is a reflection of the common will. It is obvious that if the people chose to have in it, fundamental legal and/or fundamental non-legal rules, that choice is theirs to make. The view that a constitution should contain only legal rules would imply that a preamble and aspirational rights such as set out in chapter II of the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999) would not have a place in a constitution.

It is not compulsory for the constitution to be contained in a single document or any number of documents provided that the rules which form part of the constitution are recognised as basic

[2] See for e.g., O S Obi, *Fashioning the Constitution of a Federal Democratic System: Analysis of Nigeria, Australia, Canada and USA Representative Systems* (CIDJAP Press, Enugu, 2002) 428, 429, 438

[3] K C Wheare, *Modern Constitutions*(1st Ed) cited in E I Kachikwu, 'Extending the Frontiers of Constitutionalism: Should Constitutions Contain only Legal Rules Strictly *Sensu*?,' Nig J.R. (1978-1988) (3) 86, 87

[4] E I Kachikwu, 'Extending the Frontiers of Constitutionalism: Should Constitutions Contain only Legal Rules Strictly *Sensu*?,' Nig J.R. (1978-1988) (3) 86, 87

and fundamental wherever they may be sourced. However, the provision of constitutional rules in a single document ensures that the fundamental rules as stated therein are easily ascertained and more readily recognised by all citizens irrespective of their legal training.

A more serious question on constitutionalism is whether a constitution should be one properly so called if it is not seen to have originated from the common will of the people, but from imposition by the ruling class. In the first place, constitutionalism is a means of enthroning democracy and was historically resorted to because:

It was the inevitable misuse of absolute powers of rulers in history that threw up the irresistible attraction of democracy and constitutionalism, the essence of which is to protect the individual and collective human members of the state from being governed abusively[5]

Thus, the historical role of a constitution as a means of entrenching the rule of law and limiting the powers of government[6] may seem to be mocked by what has been referred to as 'constitutional mongering,[7] in fashioning and using constitutions that do not originate classically from the people. However, Kelsen's hierarchy of norms and the effective constitution irrespective of its democratic credentials, have led jurists to conclude that Kelsen's grundnorm or 'alpha' or 'fundamental' or 'topmost authority norm'[8] is the constitution of a modern state, irrespective of how it originated to become an effective and applied basic law document.[9]

Anyanwu strenuously disagreed with locating the grundnorm in a constitution:

It is also submitted that submitted that the Kelsenite notion of grundnorm, if it refers to the ultimate source of authority in a polity, to the extent if is a mere presupposition or assumption in juristic thinking may be said to have no foundation. If therefore collapses on its own. Ultimate source of power refers to the origin of sovereign powers. Sovereignty at all times belongs to the entire people of any given polity ....therefore, a grundnorm cannot be said to be presupposed, but it can be said to be substantialized on the people[10]

---

[5] C O Oparah, *The Power of the Presidential During a Constitutional Emergency* (De Lee Agency, Port Harcourt, 2018) 3

[6] B O Nwabueze, *Constitutionalism in Emergent States* (C. Hurst & Company, London in Association with Nwamife Publishers, Enugu, 1981), 1

[7] L Diamond, A Kirk-Green and OOyediran, *Transition Without End: Politics of Civil Society under Babangida* (Lynne Rienner Publishers, London, 1997) 31 in C Anyanwu, 'Colonialism, Military Dictatorships, Legacy of Pseudo/Dysfunctional Democracy in Nigeria-The Role of Lawyers,' NPPL (2008) (1) (1) 18, 41

[8] See A A Owolabi, The Search for Nigerian Grundnorm – A Critical Apraisal' Nigerian Current Law Review, (1996) 183

[9] B O Nwabueze, *Judicialism in Commonwealth Africa* (C. Hurst & Co., London, 1977) 154; A Ojo, *Constitutional Law and Military Law in Nigeria*, Evans Brothers (Nigeria Publishers) limited, Ibadan, 1987, 82

[10] C Anyanwu, 'Colonialism, Military Dictatorships, Legacy of Pseudo/Dysfunctional Democracy in Nigeria-The Role of Lawyers,' NPPL (2008) (1) (1) 18, 41

The argument on Kelsen's validation of an effective constitution as a norm, irrespective of how it emerged, and which has been applied by courts around the world,[11] has been made for and against the CFRN 1999.[12] No doubt, a constitution should represent the general will of the people as a social contract document. Can a reworking of an imposed constitution by those elected under it confer popular legitimacy on such a constitution? Or should a state set aside the imposed constitution and it derivative elected representatives and allow a sovereign constitutional conference to formulate a new popular constitution?

In any event, Kelsenitegrund norm in any legal system that is truly democratic is located in the constitution, which gives validity to other (and lesser) hierarchy of norms in the legal system of the state. Thus, constitution making becomes a necessary practice, to serve as a bulwark against undemocratic intrusion into the governance of a state.

2.2.Democratic Governance

The word democratic means to conform to a 'democracy.' As Abraham Lincoln famously put it, democracy is government of the people, by the people and for the people. It is the system of government in which the choice of those who govern, the manner of governance and the sustenance of those who govern in government is determined by and in accordance with the general will of the people governed. Democratic governance is thus governance in accordance with the tenets of democracy. As Wokocha put it

Democracy presupposes the individual and collective right of the people to formulate and determine their political and socio-economic destinies, by formulating and choosing their desired political structures and functionaries for the socio-economic pursuit of their individual and collective development (management of their polity) on the principles of equality, justice and liberty. Democratic governance accordingly will mean the administration of a polity by the authority, appointment and terms of the people expressed on the principles of equality, justice

[11]See for e.g. Uganda v Commissioner of Prisons, Ex Parte Matovu (1966) EAR 514

[12]CAnyanwu, 'Of Sovereignty, Grundnorm, Authochtonous Constitution, Conferences and the Stability of a Decolonised State,' in M M Gidado, C U Anyanwu, A O Adekunle(Eds.), *Constitutional Essays in Honour of Bola Ige; Nigeria Beyond 1999: Stablizing the Polity through Constitutional Re-Engeneering* (Chenglo Limited, Enugu, 2004) 11, 15. CF Abiola Ojo, 'The Search for Grundnorm in Nigeria,' International and Comparative Law Quarterly (20)124 in Chris Anyanwu, 'Colonialism, Military Dictatorships, Legacy of Pseudo/Dysfunctional Democracy in Nigeria-The Role of Lawyers,' NPPL (2008) (1) 18, 36

and freedom[13]

In any level or tier of government in a state, democratic governance must imply that people participate in government and truly chose those who govern them under a system of government that enthrones accountability, respect for the human rights, rule of law and which accords the people the right to change those in government. To put it in another way, democratic governance requires democratic structures ensured through constitutional and legal provisions guaranteeing human rights, right to seek redress, rule of law, supremacy and rigidity of the constitution, separation of powers, and checks and balances in the exercise of governmental powers.[14] These requirements are also embedded in the rule of law,[15] and imply the need for republicanism.

However, besides the structure of government as constitutionally or legally provided for, democratic governance also requires the 'spirit of the law of a democratic system' to be enthroned; thus democratic culture plays an important role in responsiveness and observance of the tenets of democratic governance. The bare text of the constitution and laws do not guarantee acculturated observance of democratic ethos. The importance of acculturation has been expressed thus: "A condition precedent for enduring democracy is that the democracy in question must become internalized in the country if its operation in operation is based on abiding faith in the principles of the rule of law as a way of life."[16] "The idea of culture of human rights therefore encompasses the vision of organizational culture of practically guaranteeing human rights in every government policy, decision, actions and projects as well as in every sector of the society as a whole"[17]

It is however submitted that a lack of democratic culture in governance will not justify failure to enthrone constitutional and legal structures for democratic governance. Good structure for democratic governance is likely, in the long run, to positively influence acculturation. In any

[13] R A Wokocha, 'Democratic Governance, The Rule of Law and Sustainable Democracy in Nigeria,' Port Harcourt Law Journal (1999) (1) 112, 113

[14] (n 5) 77-91

[15] See D I O Ewelukwa, 'The Rule of Law,' (1944-1997) Nig J. R. I, 2-9; D I O Ewelukwa, 'The Rule of Law in Action,' (2000-2010) Nig. J. R.(I) 12-20

[16] E A Odike, 'Furthering Good Governance and Sustainable Development in Nigeria-The Imperatives of Anchoring Democracy on the Rule of law,' Journal of Contemporary Legal Education (2017)(1) 35, 49

[17] E Thompson, 'Human Rights in Africa: Making it a Culture' in C A. J. Chinwo (Ed.), *Opening and Enriching the Channels of Justice in the Nigerian Society: Essays in Commemoration of Four Decades of Legal Practice of O.C.J. Okocha* (Life, Law and Grace Bookhouse& Chi Amazing Grace Ltd., Port Harcourt, 2018) 251, 255

event, few societies have actually achieved the ideal rule of law,[18] but that does justify an abandonment of society's effort to achieve it, having seen that there is no better alternative in human governance.

2.3Local Government Administration

Local Government refers to the level of the government of a state that is closer to the community or group of people that is governed within a state. The word "local" is relative to the size of the entire area within a state governed. Local government thus refers to the government of the local area of a nation or state.

The United Nations Office for Public Administration defined local government as "A political subdivision of a nation or (in a federal system) state which is constituted by law and has substantial control of local affairs including the powers to impose taxes or to exact labour for prescribed purposes."[19] Black's Law Dictionary defines it as the government of a particular locality, such as a city or county; a governing body at a lower level than the state government.[20]

What matters in identifying a local government is that where there is more than one tier of government in a state, the tier closest to the people in a relatively smaller area is known as the local government.

Local Government Administration will thus mean the administration or governmental organisation in the local area as established within a state.

2.4Citizens' Rights

Citizenship relates to the relationship between a person and municipal law. Citizenship is not the same thing as nationality. All nationals may not be citizens. A citizen possesses full political and civil rights in his state.[21] Citizenship is determined by legal rules which set out the conditions for recognising a person as the citizen of a state. A citizen has more rights in a state arising from the benefits of governance more than an alien or foreigner in that state. Citizens' rights include all human rights and all political, social and economic privileges that should be accorded a citizen

[18]E Al-Dadah and others 'Overview' in E Al-Dadahand others(Eds.), *Rules on Paper, Rules in Practice,* (World Bank Group, Washington, 2016) 1

[19] United Nations Office for Public Administration in I C Idoko and A E Obidimma, 'Local Government Autonomy under the 1999 Constitution of Nigeria: A Readily or Myth,' NAU JPPL (2020)(10) 77, 80

[20] B A Garner(Ed.), *Black's Law Dictionary* (8th Ed., Thomson West Publishing Co. Limited, St. Paul, 1999) 716

[21] H O Agarwal, *International Law and Human Rights* (17th Ed., Central Law Publications, Allahabad, 2010) 243

of a state by virtue of citizenship.

Within a state, there are legal rights in the strict sense which can be enforced in a court and rights in a general sense which are legal rights as well as the privileges and benefits, which are being enjoyed or are aspired to be enjoyed within a state. Viewed from the perspective of right to security, citizen rights amount to:

All those things that men and women anywhere in the world cherish most: enough food for the family; adequate shelter, good health; schooling for the children; protection from government whether inflicted by man or nature; and a state which does not oppress its citizens but rules with their consent…Human security is about people: their needs, their welfare and their aspirations…"[22]

These include participatory rights; socio-economic or welfare rights; reproductive rights; common law, statutory and constitutional rights; rights of the vulnerable in society; and rights in whatever classification or sense that should be accorded to a citizen in the state to which he belongs. In short, citizens' rights are all human rights, benefits and privileges that ought to be enjoyed by a citizen.

3. Theoretical Link between Democracy and Enjoyment of Citizens' Rights

Democracy is one of several forms of government. Other forms are autocracy and monarchy. The distinguishing mark of democracy is that it provides a form of government which responds to and respects the general will of the people in governance. The origin of democracy has been traced to the ancient Greeks. The ancient Greeks' method of governing their city states by gathering together to take decisions was also practiced by acephalous African societies in some form. Busia writes that among the native San of the Kalabari desert, Pygmies of Zaire, Luo of Kenya, Ibo of Nigeria, Talliensi of Ghana and Nuer of Sudan, there were no centralised authority and decisions were taken collectively..[23]In Ibo land, the ancient practice of collective decision making still somewhat adopted in modern times, is that family members, particularly men who

[22]L Frechette (Statement as UN Deputy Secretary General to a High level Panel Discussion on the occasion of the 20th Anniversary of Vienna International Centre, 9 October 1999<https://press.un.org/en/1999/1991012.dsgms70.doc.html>assessed 17 July 2022 in O E Okeke, 'The Primary purpose of Government: A Legal Survey' NAU JILJ (2022) (13) (2) 1, 6

[23] N A Busia, 'The Rights of Self Determination, the State and the Quest for Democracy in Africa: An Exploratory Analysis,' (Proceedings of the Fourth Annual Conference of African Society of International and Comparative Law, 10 April, 1992), 38,39 in U O Umozurike, *African Charter on Human and Peoples' Rights* (Kluver Law International, The Hague, 1997) 14

are members of the kindred (*Umunna),* usually gather at the *Obi*[24]or a convenient open space to deliberate and take vital decisions relating to their affairs, with the eldest man as the natural head of the family or kindred. But the eldest man, though highly respected and accorded special privileges in the family as the natural ruler, never wields dictatorial powers. It is often said among the Ibo that 'one person does not make up the generality;' an acclaim that autocracy is not permitted among the people.

However, the practice of democracy as it was the done in the ancient Greek city states and the smaller African communal acephalous societies is not suitable for a large modern state and in a complex world where the ordinary man in the society, in order to govern effectively, requires to set out time and perhaps to study or understudy and acquire needed specialisation to be able to make well informed decisions relating to international and national affairs. Republicanism-that is the practice of representative government-becomes the realistic way to achieve democracy in a *behemotic,* complex state. This is reflected in the provision of CRFN 1999 for elected President, Governors and members of the Federal and State legislative houses with fixed tenure. Republicanism is however not practiced to its fullest ideal in all matters of regulating officials in government offices. Nevertheless, democracy practiced through republicanism represents the best form of modern government that guarantees the respect of the interests of the governed.

It may sometimes be said that autocratic rulers like Ataturk of Turkey, and some would even add Gaddafi of Libya, exhibited benevolent and people beneficial leadership. But men cannot be trusted with autocratic leadership in as much as even wise Solomon was said to have governed a prosperous Israel, making 'gold as dust' in his state and that he treated the citizens of his state well. Yet it was clear that the good done to his people was at the expense of foreigners who were put under servitude, having their human rights denied. Even his own people, after his death, complained that he made their "yoke grievous" and demanded that "now therefore ease thou somewhat the grievous servitude of thine father, and the heavy yoke that he put upon us and we will serve thee."[25] King Rehoboam's failure to respond favourably to their demand provoked people of the Northern tribes of Israel to press for and achieve self-determination, by revolt.

Natural law birthed natural rights upon which the idea of human rights was founded. It is not surprising that Greek philosophers popularised the ideas of natural rights as well as that of

[24]Native meeting hall

[25]*The Holy Bible,* 1 Kings 12:10

democracy. Several of them wrote that all men are equal. For example, Greeks' Stoics and Cynics held that all men belong to a world-state where they are equal with natural law applying to dictate everything according to right reason.[26] It was the Greeks idea of natural law and natural rights, developed in the rest of Europe and elsewhere that evolved into modern international human rights:

The era of classical Greece, from about the sixth century BC and onwards for a couple of hundred years, has, one must note, been of over whelming significance for European thought. Its critical and rational turn of mind, its constant questioning and analysis of man and nature and its love of argument and debate were spread throughout Europe and the Mediterranean word by the Roman Empire…[27]

In applying natural law to governance, it became inevitable that if men are equal, the rule of one man or some men must of necessity be, not as of right, but by an agreement-the social contract- to which all men subscribe. Rousseau thus opined that the idea of superiority of the ruler is likened to reducing man to the superiority of herdsmen over his herd[28] and "since no man has a natural authority over his fellow men, and since force is not the source of right, conventions remain the basis for all lawful authority among men."[29]

The location of 'conventions' as the basis for lawful authority by Rousseau gives validity to constitutionalism and democratic governance which is the certain means of ensuring that those who hold the levers of governmental power do not hold it for selfish gain but for the good of all.

Notwithstanding its imperfections, constitutional democracy remains the best form of government that guarantees good governance and respect for natural law founded on the equality of all men and thus guarantees the natural rights of the citizens.

The natural rights of the citizens translate into human rights of the citizens. Good food, good shelter, good health, good roads, good education, good water, good electricity supply and all other amenities, are more assured from good governance, and good governance is more assured under democratic governance. It has been rightly stated that;

Ideally good governance promotes efficient and effective government operations, ensuring that

---

[26] O Okpara, 'History and Concept of Natural Law (1)' in O Okpara (Ed.), *Human Rights Law and Practice in Nigeria, Vol. 1* (Chenglo Limited, Enugu, 2005) 6,7

[27] M N Shaw, *International Law* (5th Ed., Cambridge University Press, Cambridge, 2003) 15,16

[28] J Jacques-Rousseau, *The Social Contract Theory or Principles of Political Right* (H. J. Torer (trans.), Woodsworth Classics of World Literature, Hertfordshire, 1988) 5

[29] Ibid, 54

public resources are used rationally to benefit the citizens, while democracy and good governance uphold the rights of minorities. Good governance helps to ensure that the rights of all citizens regardless of their affiliations are protected[30]

4Brief History of Democracy in Local Administration in Nigeria

Nigeria's history is often considered in three phases: pre-colonial, colonial and post-colonial. The last is usually split into civil and military rule. The pre-colonial era saw the local governance of the emirates, kingdoms, chiefdoms, and a cephalous society by the natives or in some cases by their conquerors. Some modicum of democracy was practiced in the acephalous societies where men usually gathered to take decisions concerning their communities[31]

The British, who had already had a history of developed democracy, ensured by the philosophical ideas that had developed, and the wrestling of independence from their autocratic kings, did not consider their colonies for the full operation of democratic governance at any level. In any event, colonisation was not based on altruism but on expansionist political influence by world powers and the drive for economic exploitation. Thus, indirect rule was adopted; and appointed British officials manned the local government administration as district officers or commissioners of native administration in some areas while permitting warrant chiefs and kings/emirs to interface between the local people governed and the higher levels of British bureaucracy. Within the colonial period, there were constitutions of 1914, 1922, 1946, 1951 and 1954. The British did not consider any form of national democratic administration. That became possible only with the 1960 Constitution. However, between 1950 and 1955, elected local government councils emerged in Lagos, Eastern and Western Regions and under the Native Authority Law, 1954, of the Northern Region.[32]

The subsequent civil rule constitutions of 1960 and 1963 left the local government administration to the regional legislatures to fashion out. The military interrupted civilian administration from 1966 until 1979 but did not do anything towards democratisation of local

[30]I L Paul-Worika, 'Law, Democracy and Good Governance-The Link' in A Amuda-Kannike and J Barde(Eds.), *Contemporary Issues in Law Democracy and Good Governance Vol II, Festschrifts in Honour of Mike A.A. Ozekhome, SAN* (Faculty of Law, Kwara State University, Ilorin, 2024) 72, 740

[31] (n 23) 14

[32]L O. Nwauzi, and Onyema David Okechukwu, 'Local Government Autonomy in Nigeria : A Constitutional Dilemma' in O V C Okene, G.O Akolokwu and G.G Otuturu (Eds.), *Legal Essays in Honour Mary Odili* (Princeton and Associates Publishing Co. Ltd, Lagos, 2024) 44, 50

government administration until 1976 when the Obasanjo regime embarked on local government reforms.

The military government saw the need to institute governments at local level exercise through representative council established by law to exercise specific powers within defined areas. These powers should give the council substantial control over local affairs as well as staff and institutional and financial powers to initiate and direct the provisions of services and to determine and to implement projects so as to complement the activities of the State and federal Governments…. To ensure through devolution of these functions and through the active participation of the people and their traditional institutions, and that local initiates and response to local needs and conditions are maximized[33]

This statement of purpose was perfect in resonating a democratic model. The elected councils were however supervised and controlled by military Governors and the prospect of democracy was not achievable.

In the run up to promulgation of the 1979 Constitution, the question of local government administration featured prominently. All the concerns about democratic governance in the local government areas was recognised by the 1979 Constitution drafting committee: Their avowed mission was to "examine and make recommendations on the functions of the local government ..."[34]

The committee noted -referring to the local government reforms of 1976- that the Federal Military Government set up a task force "to make recommendation to enable the local government bodies to assume efficiently increased responsibilities for providing basic and essential services to the public at the grassroots."[35] "It is felt that the states should be stopped from cavalierly and whimsically tinkering with the local organs, dissolving them at will and setting up some officials and sole administrator."[36]

When the military again intervened in the polity in 1984, the Dasuki committee was set up the same year. The committee recommended separation of powers in the local government system.[37]

The Etsu Nupe committee of 1993 recommended direct remittance to local government councils

[33]FGN, *Guidelines for Local Government Reform* (Government Press, Kaduna, 1976) 1 in I C Idoko and A E Obidimma, 'Local Government Autonomy under the 1999 Constitution of Nigeria: A Reality or Myth,' NAU JPPL (2020)(10) 77, 80
[34]FGN, *Report of the Constitution Drafting Committee, Vol. II* (Government Press, Lagos, 1976) 148
[35]Ibid ,148
[36]Ibid, 148
[37] (n 32) 51

of the share of their allocation from the federation account.[38] Thereafter local government elections were conducted based on the Local Government (Basic Constitutional and Transitional Provisions) Decree, 1998.[39]

The recommendations of the 1979 constitutional committee found their way into the 1979 Constitution as replicated in CFRN 1999. But, ever since, the political and financial autonomy of the councils were never achieved. The states continued to interfere with the political administration and financial autonomy of the councils, ignoring several decisions of the courts of the land. As the Supreme Court noted in AGF v AG Abia State, [40] "This suit was principally instituted by the plaintiff to curb excesses of some recalcitrant governors of states who run the local government councils as part of their household or parastatals in their States."[41]

The continuing and flagrant refusal to enforce the decisions of this court in the aforementioned cases wherein the court emphatically and unequivocally constitutional stated that State Governors have no constitutional power and authority to dissolve democratically elected local government councils and to appoint officials, by whatever named called, to run such councils, as it constituted a violent breach and infraction of the provision of section 7(1) of the Constitution…[42]

It is an irony that the efforts to apply constitutional amendments[43] of CFRN 1999 to achieve autonomy for local councils were defeated because the State Governors were unwilling to support it, preferring to hold down the councils as appendages of the States.

5.The 1999 Constitution's Provisions on Local Government Administration in Nigeria and the Road to its Democratisation

5.1Local Government as a Tier of Government under CFRN 1999

It was obvious that the drafters of the CFRN 1999 conceived of local government councils

[38] Ibid, 52
[39]Decree No.36 of 1998
[40] (n 1)
[41](n 1) *per* Nwosu –Iheme, JSC, 160-161 CD
[42](n) per Garba, JSC at 153 C, D and G
[43]See proposed Constitution amendment bill in F J Oniekoro, 'Local Government Administration in Nigeria: Reflections on some Constitutional Questions' in M M Gidado, C U Anyanwu, A O Adekunle(Eds.), *Constitutional Essays in Honour of Bola Ige; Nigeria Beyond 1999: Stablizing the Polity through Constitutional Re-Engineering* (Chenglo Limited, Enugu, 2004) 285, 288-296 and (n 31) 54-55, 79

structured as parastatals of State Governments. Although the Supreme Court expressed concern about this[44] that is what the text of the CFRN 1999 made them to be; and even the recent decisions of the courts enhancing local government autonomy have not fundamentally solved the problem. Section 2(2) of the Constitution was written in terms of the Federation of Nigeria being constituted by States and the Federal Capital Territory. True, section 3(6) referred to the number of local government councils and the First Schedule listed the local governments for each state, the approach of the drafters,[45] indicated early enough that the local government system would not be considered as a tier of government in the same fashion as the Federal and State Governments. Similarly and consequentially, there was no mention of the legislative power or of the executive power in a local government in a similar way as that of the Federal Government and the States in sections 4 and 5. If the local government system was intended to be fully democratised, provisions on the executive and legislative powers should/would have been set out considering that local governments have exclusive items of legislative competence as set out in the Fourth Schedule.

5.2Functions of Local Government Councils

In constitutionalising the power of government in order to limit powers with clarity, it is normal to set out the items of legislative competence of government of every tier. The Fourth Schedule of the Constitution makes provision for "main" functions of local government councils in paragraph 1 and in paragraph 2, for participation in the government of the state in:

The provisions and maintenance of primary, adult and vocational educator

The development of agriculture and natural resources, other than the exploitation of minerals

The provisions and maintenance of health services; and

Such other functions as maybe conferred on a local government council by the House of Assembly of the state

It has been held that the local governments have exclusive functions with respect to the items set out in paragraph 1 of the Fourth Schedule;[46] but even in respect of that, the extent of the functions of a local government in regard to "construction and maintenance of roads, streets,

[44](n 1) per Nwosu-Iheme, JSC, 160-161 C,D

[45] Instructively the drafters always used small letters to mention "local government," whereas the others were referred to as "Federal Capital Territory" "State Government" Federal Government." See also s. 7(4), CFRN 1999 which shows that States are to take charge of LGCs.

[46]Knight, Frank and Rutley v AG Kano State (1998) 58 LRCN 3707

street lightings, parks, gardens, open spaces, or such other public facilities as may be presented from time to time by the House of Assembly," as set out in paragraph 1(f) substantially erodes any seeming exclusivity of functions set out under the Fourth Schedule. It is notable that the items mentioned in paragraph 1(f) require substantial budgetary allocation. The question is, to what extent a local government council can legally fail to get involved in the expenditures and programmes of governance, if the state by law specifies that such and such are to be undertaken by the local governments. This erosion of independence as to economic programme accounts for the reason Governors have been heard on radio issuing oral directives on what roads the chairman of a local government council should do.

To complete the erosion of independence in functions, paragraph 2 of the Fourth Schedule – which stipulates participation by local governments in the matters specified under sub paragraphs (a) (b) and (c) and such others as may be specified by law made by the State House of Assembly -makes it unfeasible that a local government council will not participate to such extent and in such manner as dictated by the law made by a House of Assembly, irrespective of what the councils may require to do as dictated by the general will of the local people governed

One problem that could arise from having a more independent tier of local government will bother on how to harmonise the legislative jurisdictional competence between the local government and the State. Another problem is that of competent personnel required to run a more sophisticated local government administration which has been identified as bedeviling local government administration in Nigeria[47] These problems can be solved by making the subject matter of legislative competence clear and appropriately limited to those that are best handled by local governments, such as are already assigned to local governments under CFRN 1999,[48] and by ensuring adequate minimum standard of qualification and experience for different cadres of local government administration. Nigeria is no longer in dearth of educated personnel.

(c) Democratic Elections, Separation of Powers and Security of Tenure

To achieve democratic governance, free and fair periodic elections and separation of powers of government are necessary. In addition, the tenure of elected officials should be secured, to

[47]See M S Agba and Others, 'Local Government Finance in Nigeria: Challenges and Prognosis for Action in a Democratic Era (1999-2013)' Journal of Good Governance and Sustainable Development in Africa (2014)(2)(1)

[48]See paragraphs 1 and 2, Fourth Schedule, CFRN 1999

enable them carry out their mandate, subject to making provisions for impeachment, recall and other mechanisms for accountability of government. Apart from making provision for democratically elected local government councils;[49] functions of the councils;[50] constitution and functions of SIECs;[51] and charging INEC with the function of compiling voters' register to be used in local government elections,[52] no other provision relating to these was constitutionalised. Matters of tenure, security of tenure and local government elections were left for the law of the House of Assembly of a State to prescribe.[53]

What the Constitution majored on is to ensure a system of democratically elected local governments. This has been interpreted to mean that non-democratically constituted local government councils are unconstitutional and that appointed officials are not to govern the local governments.[54] The constitutional guarantee did not expressly go further than "democratic election of local government councils." What the courts have done is to progressively interpret the provision to accommodate democracy. There is no express constitutional guarantee of democratic removal and security of tenure. It is no wonder that councilors and chairmen have suffered suspension and removal at the whim of the Governors acting on laws made by the State Houses of Assembly.[55] Cases in which the council members challenge the Governors are usually when the political alliances are no longer conducive. The Governors normally run their parties State branches as lords, barring any serious challenge from another political strongman.

One of the ways to whittle down the lordship of the Governors is to constitutionally make provision for, and allow independent candidacy at local government elections. This could be a way to diminish party politics in governance at the local government level which the Governors have always personally dominated.

It is submitted that the constitutional provisions for compilation of voters register for local government council elections by the INEC[56], the provision for the State Houses of Assembly to

[49] S. 7(1), CFRN 1999
[50] Fourth Schedule, CFRN 1999
[51] Third schedule, Part 11B, CFRN 1999
[52] Third Schedule, Part 1F(15)(e), Fourth Schedule Part 11(B)(4)(b), CFRN 1999
[53] S. 7(1), CFRN 1999
[54] See for e.g. s.64, Rivers State Law, 2018 which empowers the River State HA to enquire at any time into the running of any LGC and give any directive as it may deem necessary. The section also empowers the Governor to suspend the chairman, vice chairman and councillors for even political questions and nebulous reasons.
[55] (n 1); Akan v AG CRS (1982) 3 NCLR 881; FRN v Solomon (2018) 7 NWLR (1618) 221; Akinpelu v AG, Oyo State (1984) 5 NCLR 557
[56] Third Schedule, Part 1F(15)(e), Fourth Schedule Part 11(B)(4)(b), CFRN 1999

legislate on local government elections[57] and the establishment of SIECs to organise local government elections[58] do not by their mere provisions, pose a threat to democratic choice of local government officials. What is creating the problem of imposed candidacy at the whim of Governors, lies in the unchecked magisterial control by the Governors of the reigns and finances of State governments and the state apparatus of the parties, for reasons including corruption; a culture of African societies being fixated on creating 'the big man' and other factors that create dysfunction of the democratic process. A lot of the reforms required to institute democratic governance then must go beyond constitutional provisions on the system of local government administration. Nevertheless, it is imperative for the constitution to entrench in it, provisions on local government administration relating to executive powers, legislature powers, separation of powers, tenure, security of tenure, impeachment and re-call, which are signposts of democratisation. It is however not necessary for the local government to have its only exclusive judiciary. A truly independent state and/ or federal judiciary that has competence to entertain cases involving local government issues will suffice. The entrenchment of these constitutional provisions will go a long way to ensure that the structure of local government administration is democratised and freed from the overbearing control of State Governors who dictate to their State Houses of Assembly and impose their personal will on local government administration.

(e)Financial Autonomy

In a democracy, the government is elected by the people to execute the social contract. It is therefore important to allow and empower the government at the local level to perform their obligations in accordance with the general will of the electorate which should dictate the matters on which expenditure is made. It has been held by the courts that it is illegal for the Federal Government to withhold the funds accruing to local government councils;[59] that the Federal Government cannot regulate the amount standing to the credit of local governments;[60] but this is no relief for the cavalier control of local government funds by State Governments. The fact that local governments are unable to use their finances to fulfil the mandate of the people of the local area is a slap on democracy. It has been the federal government trying to help out the local

[57] S. 7(1), CFRN 1999
[58] Fourth Schedule, CFRN 1999
[59] AG Lagos State v AGF (2004) 11-12 SC 83
[60] AG Ogun State v AGF(2002) 18 NWLR(Pt. 798) 232,344

government to be free from financial impositions by State Governments. The latest effort of the Federal Government culminated in the decision in AGF v A.G Abia State.[61] The issues considered in the case bothered on political and financial autonomy of local governments in Nigeria. In the originating summons taken out by the AGF on behalf of the FGN against the thirty six states of Nigeria, fifteen questions were raised based on which seventeen reliefs were sought by the plaintiff. The provisions of the constitution that bothered on financial autonomy considered by the court are section 162(5)-(8):

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

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

Each State shall pay to local government councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.

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

In interpreting these provisions, the Supreme by a majority held with regard to the section, with Justice Abiru dissenting, on certain aspects, that amount standing is the account of the Federation accruing to local governments should not be withheld by States and utilized as the state deems fit but paid to local government councils; that no law of a state can prescribe the terms and manner of distribution or payment of the money due to local government councils; that it is local government councils that control and manage funds accruing to them including allocations from the federations account; that the stipulation in section 162(5) and (6) are mere procedural methods of getting funds to local governments councils and the same should be overlooked to get the funds accruing to local governments council to be paid to them directly without routing it through the states.[62]

The majority decision of the Supreme Court in this case desperately demands juridical review

[61] (n 1)
[62] (n 1)

from various perspectives. Suffice to note that it ignored the literal interpretation on certain aspects of these provisions in order to enhance political and financial autonomy of local governments in Nigeria, overruling itself in some aspects in the earlier case of AGF v AG Abia State,[63] and making quite controversial statements on the relationship between the States and local government in relation to financial autonomy and on constitutional interpretation. The dissenting judgment appeared to have been more realistic on financial autonomy:

…the federation conceptualize...did not envisage a situation where the local government areas would be on equal footing with the states and / or where the federal government will deal with the local government council directly without going through the states.[64]

In practical terms, the decisions of the Supreme Court in AGF v A.G Abia State[65] has beneficially buried the corpse of lack of financial autonomy but its ghost remains. The ghost lies in the provisions of Fourth Schedule, paragraphs 1(f) and 2 of the Constitution which allows the Houses of Assembly of a State to determine how monies now directly payable to the local government councils and which the present Federal Government is willing to enforce,[66] could be legally applied. The leeway to lack of financial autonomy will leave the road of withholding funds due to local government councils to the even more paved road of manipulating the application of the monies received by local government councils through the operation of Fourth Schedule, paragraphs 1(f) and 2 of the Constitution. The decisions so far coming from the courts were not made on these particular provisions. Unfortunately for selfish political expediency, it may be difficult to get local government council officials who are willing to toe their own line or complain. It is difficult, except by 'extreme' judicial activism to get any court to decide in favour of local governments in this aspect. Amendment of the Constitution is required.

It is however notable that the mere grant of financial autonomy to local governments will not by itself make the problem of misappropriation of local government finances to go away. The fact is that local government officials themselves are reputed to be corrupt in managing local government council funds.[67] It requires a constitutional and legal system of strong checks and

[63] AG Abia State v AGF(2006) 16 NWLR (Pt.1005) 265
[64] Per Abiru JSC at 260-261 E-A
[65](n 1)
[66]N Chiejina and L Oata, 'Direct Payment of Allocations to Councils Begin next Month,*' The Nation Online* (Lagos, 15 January, 2025ation Online.net) https://The Nation Online.net/direct-payment-of-allocations-to-begin-next-month/<accessed 15 January 2025
[67] M C Nwakanma 'Corruption in the Nigeria Local Government System: the way forward.' African Journal of Politics and Administrative Studies (10)(1) 99

balances and oversights of management of local government finances, to compliment the grant of financial autonomy to the local government.[68]

6. Conclusion and Recommendations

Democracy is the best way to institute a people-oriented government. Democratic governance ensures that the dividends of democracy in the form of citizen rights are adequately enjoyed by the people. This is assured when, among other things, the pre requisites of democratic governance are entrenched in the constitution rather than in ordinary statutes which may be easily amended to erode them.

The CFRN 1999 guaranteed democratic election of local government councils in Nigeria in clear terms. The courts have stretched their interpretation to annul the constitution of local government councils with appointed officials and removing elected officials without recourse to democratic means. The courts have now also improved on the financial autonomy of local government councils with the recent decision of the Supreme Court in AGF v Abia State[69] which secured direct payment of local government council allocations to them without going through the states. Although this recent decision is controversial in some aspects, particularly as relating to financial autonomy, it is a credit to the enhancement of democracy in local government administration. The decisions of the courts do not however address all the loopholes by which political and financial imposition, against the tenets of democracy, is visited against the local government councils, and by extension against the people governed in the local governments. This particularly relates to the provisions of Fourth Schedule, paragraphs 1(f) and 2 of the Constitution

There is need to constitutionalise and replicate the 1999 Constitution's Federal and State tiers' legal mechanics for separation of powers, security of tenure, checks and balances; impeachment and re-call in the local government system of administration without external imposition, as well as meaningfully constitutionalise the grant of full financial autonomy to local government councils. Autonomy should however be complemented with a strong system of checks and balances and oversight as well as a system of sustainable quality local government administration. This is the road to democratic governance in local government administration.

[68]CE Ike, ' Nigeria's Local Government Autonomy: Issues and Implications for the Country's Development' Journal of Political Discourse (2024)(2)(3)(3) 48, 52

[69](n1)

This paper recommends to all the executives and legislatures in Nigeria, the need for amendment of the Constitution to grant the local government councils the status of independent tier of government in each state; make provisions for exercise of executive and legislative powers; separation of powers; checks and balances; impeachment and re-call and for full financial autonomy relating to receipt and application of monies accruing to local governments councils. A constitutional amendment to enable independent candidacy for political offices in the local government councils will also be beneficial for the purpose.