

FEDERALISM IN NIGERIA AND LOCAL GOVERNMENT FINANCIAL AUTONOMY: ATTORNEY GENERAL OF THE FEDERATION VERSUS ATTORNEY GENERAL OF ABIA STATE & 35 ORS (2024)

Gadzama Christopher Linus

Faculty of Law, Federal University Wukari, 08033077037

E-mail: gadzamabob@gmail.com

ThankGod Okeokwo

Faculty of Law, Federal University Wukari, 08039316857

E-mail: barrthankgodokeokwo@gmail.com

Received: Jun 22, 2024; Accepted: Jul 29, 2024; Published: Aug 30, 2024;

Abstract: The Constitution of the Federal Republic of Nigeria 1999 (as amended) serves as the foundational legal framework for governance in Nigeria, delineating the structure and functions of government at various tiers. **General Background:** Recent Supreme Court rulings concerning local government autonomy have intensified debates about the nature of Nigeria's federal structure, particularly regarding whether it constitutes a two-tier or three-tier system. **Specific Background:** This article critically examines the constitutional provisions that govern local government administration and the legislative authority of State Houses of Assembly, focusing on the implications for Nigeria's federal architecture. **Knowledge Gap:** While existing literature has addressed aspects of Nigeria's federalism, there remains limited analysis of the constitutional recognition of local government as a third tier and its dependence on state legislatures. **Aims:** The objective of this study is to elucidate whether the Nigerian Constitution endorses a two-tier or three-tier federal structure and to assess the implications of recent judicial decisions on local government autonomy. **Results:** The findings indicate that the Constitution acknowledges a three-tier federal system, with local government councils—despite being the closest to the grassroots—remaining under the legislative control of the states. **Novelty:** This research contributes to the discourse on Nigerian federalism by highlighting the unique characteristics of local governance within the constitutional framework. **Implications:** It is recommended that the 1999 Constitution be amended to establish local governments as a fully independent third tier, eliminating their reliance on state governments, thereby enhancing local governance and accountability.

Keywords: Local-Government, Financial-Autonomy, Federal-System, 1999-Constitution



This is an open-access article under the [CC-BY 4.0](https://creativecommons.org/licenses/by/4.0/) license

Introduction

The federal system of government is like a team made up of different players, each with its role, working together to achieve a common goal (Calabresi, 1995). This setup is all about sharing power, making decisions, and balancing authority between central, states and local governments. Federal system is a way of governing that divides power between a central authority and smaller political units, like states and local government. A federal system of government creates a balance between unity and diversity. It allows for local autonomy while ensuring a cohesive national policy framework.

The roots of the federal system can be traced back to various historical contexts, but one of the most notable examples is the United States. After gaining independence from Britain, the

Founding Fathers realized that a strong central government was necessary to unite the states. However, they also wanted to ensure states could control their local affairs—hence the creation of a federal system through the Constitution in 1787 (Kurland and R Lerner, 2000). Federalism didn't stop with the U.S. Other countries, like Canada, Germany, and Australia, adopted similar structures. Each of these nations has its unique reasons for choosing federalism, but the overarching idea of shared governance remains the same.

The evolution of Nigeria's federal system is rooted in its colonial past. The British colonized Nigeria and imposed a centralized form of governance. As awareness grew about regional needs and ethnic differences, federalism became a more appealing solution. The move towards federalism in 1954 was not just a political necessity but a democratic imperative. Before 1954, Nigeria was governed in a unitary system, where the central authority had most of the control. But as the country approached independence, it was clear that a one-size-fits-all approach wouldn't work. The 1954 Lyttleton Constitution introduced federalism to Nigeria, creating a more balanced distribution of power. This was a crucial moment. It recognized the diverse ethnic groups and regions within Nigeria, setting the stage for a governance model that aimed to accommodate various interests. When talking about Nigeria, it's hard to miss the importance of its federal system. The journey began in 1954, marking a key shift in how the country managed power and governance. It was a way to balance regional interests while maintaining national unity; this structure allows different states within Nigeria to govern themselves to a degree while still being part of a larger whole.

Nigeria's federal system also ensures representation of its many cultures. With over 250 ethnic groups, the design of the government recognizes the importance of diverse voices. Each state reflects the culture and aspirations of its people, making governance more relatable. It's like a potluck dinner where everyone brings a dish that represents their culture, creating a richer experience for all. Finance plays a crucial role in federalism (Wood, 2003). The distribution of resources is vital for balancing power. Nigeria employs a revenue-sharing formula to ensure all tiers of government receive their fair share. It's akin to sharing the household budget, where each member gets a portion based on needs and contributions.

The Concept of federalism

One of the standout features of a federal system is the clear division of powers. The Constitution typically outlines what the central government can do, such as conducting foreign affairs or managing national defense, while also giving states power over areas like education and transportation. It's a way to ensure neither side oversteps its boundaries. States or regions in a federal system have a certain level of autonomy. This means they can create their laws and policies tailored to their needs without constant interference from the central government. Federal systems can adapt to the diverse needs of their population. Different states may have different cultures, economies, and social issues. By allowing local governments to address these specifics, the federal system can provide more relevant and effective governance. With multiple levels of government, conflicts can arise over authority and responsibilities. Federal systems usually have established methods for resolving these disputes. When issues come up, like a state wanting to implement a law that conflicts with federal regulations, there are legal frameworks in place to mediate these challenges. In a federal system, citizens often enjoy dual citizenship, meaning they are citizens of both their state and the nation. This dual status fosters a sense of belonging at both levels of government, enriching civic engagement and participation.

The constitution lays out these powers in three main areas: exclusive, concurrent, and residual powers. **Exclusive Powers** are those that only the federal government can handle, such as defense

and foreign affairs. Think of it as the parents making big decisions that impact the whole family. **Concurrent Powers** are shared by both the federal and state governments, like education and healthcare. It's when family members must collaborate to ensure the household runs smoothly. **Residual Powers** belong to the states. These are matters not mentioned in the constitution, allowing states to address local issues, similar to kids handling their chores. Nigeria operates under a three-tier government system: the federal, state, and local governments. Each tier has its responsibilities. **Federal Government:** Manages national issues, designs policies, and implements laws that benefit the whole country. **State Governments:** Focus on state-specific needs and issues. They ensure that local communities have access to services and resources. **Local Governments:** The grassroots level handles day-to-day local matters. They are like frontline workers in the governance of a community.

Methods

This research adopts the doctrinal methodology with primary data from the recent case of Attorney General of the Federal versus Attorney General of Abia State & 35 Ors judgment decided in 2024. This method allowed for data sources from the Nigerian Constitution and other cases as well as articles on related theme. It is hoped that issues around local government financial autonomy would have received more illumination arising from the case under review and analysis carried out herein.

Results and Discussion

Nigerian federalism under the 1999 constitution

Federalism, as framed by the 1999 Constitution, is essential for Nigeria's unity. Given the country's diverse ethnic and cultural landscapes, this system allows for a balance of power that can cater to various interests. Federalism is not merely a structure; it's a strategy for coexistence, allowing both the federal level and the states to flourish independently yet harmoniously. Federalism in Nigeria is like a delicate balance of power, with the 1999 Constitution serving as a guiding framework. This system gives certain powers to both the federal and state governments as well as the local government. Exploring how this system works, particularly through specific sections of the Constitution, can help us understand its importance and implications.

The Nigerian Constitution declares the supremacy of the Constitution itself in section 1 thereof. This means that any law inconsistent with the Constitution is void. Similarly, this section maintains that both federal and state laws must align with the Constitution. It sets the groundwork for how power is distributed between the two levels of government. By laying this foundation, Section 1(2) prevents any state from overstepping its bounds and ensures that federal authority remains intact. Section 1(2) of the 1999 Constitution is the bedrock of Nigeria's federal system. It emphasizes that the Constitution is the supreme law of the land. This means every state and local government must follow it. Federalism thrives when there are clear boundaries and authority. This section sets the tone, ensuring that no one—be it the federal or state government—can override the Constitution. This section also clarifies that the government's power comes from the people. By establishing this principle, it underscores that the voices of citizens matter. Should any government agency exploit their power, citizens have the right to challenge them. In essence, Section 1(2) creates a balance where federal and state powers coexist, much like two sides of a coin.

Section 7(1) of the Constitution on its part emphasizes the importance of local government. It establishes that the business of governance should be taken to the grassroots level, promoting participatory democracy. By empowering local governments, citizens get a voice in their affairs. This section gives states the authority to create local government councils, making governance more responsive to the people's needs. It's a vital piece that helps link federalism to local participation.

Furthermore, Section 7(1) addresses local governments directly. It mandates that local governments must be run by democratically elected chairmen and councilors. It's like ensuring every part of a big family has its say during family discussions. This section aims to promote grassroots governance, making sure that local voices are heard in the broader federal structure. Local governments are vital because they are closest to the people. They understand local issues better than distant state or federal agencies. By enforcing local governance, this section allows communities to have a say in their matters, fostering a sense of ownership and responsibility. When people feel involved, they're more likely to engage and improve their communities.

Section 162 deals with the allocation of revenue among the federal, states and local governments. The said Section 162 is crucial for understanding how money flows in Nigeria's federal structure. It handles revenue allocation among the federal, state, and local governments. Section 162(3) focuses on how the federal government shares its revenue with states. The principle here is that states should receive a fair share of the wealth generated from federal resources. It outlines how revenues are allocated between the federal, state and local governments. Section 162(3) specifies how states receive their share of the federal revenue, ensuring everything is fair and square. Section 162(5) details the need for the state government to allocate funds to local governments, reinforcing the earlier theme of local governance.

Section 162(6) allows each state to create a law for the distribution of its internal revenue. This section gives states some flexibility in managing their resources. By specifying how revenue is shared, Section 162 plays a crucial role in stabilizing federalism in Nigeria, mitigating potential conflicts between local government councils and their respective states as well as between states and federal government. Sections 162(5) and (6) deal with the allocation of resources to local governments. They specify that states must allocate funds to local governments in a way that ensures development at the grassroots level. This ensures that every community has access to services and resources. Imagine trying to build a house; if the foundation is weak, the entire structure will collapse. Similarly, if local governments don't receive proper funding, the overall system suffers.

Local Government Financial Autonomy

The intention of the drafters of the 1999 Constitution is that section 7 thereof should provide for a third tier structure in the federal governance of Nigeria; section 162 intends that the third tier structure which is the local government should have funds directly from the federation account to its individual local government account instead of being dismembered through interferences by states government and their houses of assembly (AGF v AG Abia & 35 ors, 2024).

Once a counsel had paid the requisite fee for filing a Court process, that process is so validly filed and is competent, though irregular since it is the duty of the staff of the court to seal and sign the process. Failure by the staff of the court to so sign or seal should not be visited on the party or counsel. The originating process should not be vitiated by such failure (AGF v AG Abia & 35 ors, 2024:23-24). Section 162(3) of the Nigerian constitution envisages the sharing of amount of money between the federal state and local government – making it a three tier federal structure. The said section 162(3) of the Constitution did not provide for joint ownership of amount standing to the credit of the federation account (AGF v AG Abia & 35 ors, 2024:28). The distribution intended under the sub-section 3 of section 162, makes each tier entitled individually to the amount so distributed (AGF v AG Abia & 35 ors, 2024:29).

Where the state hide under sub-sections 5 & 6 of section 162 of the Constitution to deprive the local government of their funds in the guise of applying same to the benefit of the local government, such would defeat the earlier sub-section 3 of the said section 162 Nigerian constitution. That the

money is allocated through the state for the benefit of the local government does not confer on the state powers or duties to retain, expend, manage, disburse and prescribe how local government funds should be run (AGF v AG Abia & 35 ors, 2024:30). The practice was before 1999, that local government councils had to come to the accountant general's office in Abuja for their monthly allocation. It was then thought that states should receive the money as agent of the federation for each local government council in their respective states and pay same to each local government. But states have breached the trust in conferring on themselves the discretion to retain, expend, manage and disburse local government funds (AGF v AG Abia & 35 ors, 2024:31). States which had held to local government funds is said to be dubious.

Laws made by the states house of assembly which tend to prescribe how monies which accrue to the local government should be distributed are said to be invalid since section 162(3) of the Constitution had covered the field (AGF v AG Abia & 35 ors, 2024:32-33). The administration, retention, management and disbursement of the local government allocation can only be done by an elected local government council under section 7(1) of the Constitution (AGF v AG Abia & 35 ors, 2024:33). It was for the foregoing reasons that the Supreme Court held that the states retention and use of money due to the local government as unconstitutional and illegal (AGF v AG Abia & 35 ors, 2024:34). Section 162(5)(6) of the constitution contained the procedure or method for transmitting the already distributed fund under section 162(3) 1999 Constitution to the local government to which it belong in each states of the federation. Subsection 5 provides that what the local governments are entitled from federation account should be given to the their respective states and, the states should run a state joint local government account into which the distributed amount should be paid into and revenue due each local government in such state paid into the state joint local government account and such amount gotten from state revenue added to the amount distributed at the federation level should be paid directly to local government (AGF v AG Abia & 35 ors, 2024:34).

Section 162(5&6) of the constitution did not confer any right or interest in the state over funds distributed and earmarked for the local government. Neither did the said provision confer right or interest on the state over allocations made for the local government from the federation account. If allocations are made for local government, that the states acts as agent for the federation or as conveyor-belt carrying the local government monies does not confer on states the right or interest to assume responsibility or duty to determine for the local government how and what the monies should be used for (AGF v AG Abia & 35 ors, 2024:35). States in refusing to pay directly to local governments their allocations from the federation account has created an illegal status quo which defeats the intentions of section 162(3) of the constitution. The states hid under section 162(5&6) of the constitution to confer on themselves discretion not known to the constitution and therefore should be relieved of their duties as agent of the federation. The federation should paid directly from the federation account to the local government account operated by each local government in Nigeria to save the third tier of government from going extinct (AGF v AG Abia & 35 ors, 2024:36,37,40&43). In interpreting the constitution, the courts are enjoined to adopt the interpretation which will promote good governance and engender welfare of the people (Nwosu v APP, 2020). The 'living tree' doctrine of interpretation as enunciated in *Edward v Canada* (1932) AC 124 is that the Constitution must be interpreted to make it grow to meet the future: "the constitution must be capable of growth to meet the future." The 1999 Constitution contemplates a three tier federal structure consisting of federal government, state government and the local government; each of these governments are to be democratically elected. Anybody or persons, no matter how appointed or designated, other than the local government council elected for the purpose, which attempts to administer the local government,

other than an elected local government council is not consistent with sections 1(2) & 7(1) of the constitution (AGF v AG Abia & 35 ors, 2024:44).

Section 7 prescribes that those who are to administer the local government are those elected from that local government to run same. Appointment of interim council members by governor under powers vested by house of assembly laws, local government interim administrators, caretaker committee or whatsoever name called are not consistent with section 7(1) & section 1(2) of the 1999 constitution (Friday v Govr of Ondo State, 2022). A law by state government which tend to establish the existence of local government, would be valid if it does not negate or undermines or destroys the democratic nature of the local government or renders them departments or mere appendages of a state government. Such law must provide for their establishment, structure, composition, finance and function as government of the local government area independent of the state government (AGF v AG Abia & 35 ors, 2024:46). In the case of Ajuwon v Gov of Oyo State (2021)LPELR-55339(SC) the supreme court held

“a democratically elected local government council does not exist at the pleasure, whims and caprice of either the governor or the house of assembly. The misconception by the state authorities that the constitution does not intend to grant and guarantee autonomy to the local government is only a brain wave nurtured by sheer aggrandizement and megalomaniac instinct to conquer and make the local government mere parastatals of the state. That is the very mischief section 7(1) of the constitution has set out to address, and it must be so read and construed purposefully...”

The local government council is the chairman and councilors so elected by citizens from each local government council area(AGF v AG Abia & 35 ors, 2024:49). Therefore, the 1999 Constitution of Nigeria paints a comprehensive picture of federalism. Sections 1(2), 7(1), and 162 outline the power dynamics, emphasize local governance, and clarify fiscal responsibilities. Understanding these sections is crucial for grasping how federalism operates in Nigeria. The Constitution serves as a guide, ensuring that all levels of government work together to meet the needs of the citizens efficiently. Like a well-conducted orchestra, each part plays its role, creating harmony across the nation.

Constitutional challenges on Local Government Autonomy

The State Joint Local Government Account (SJLGA) is a fund that many people in Nigeria might not fully understand, but it plays a significant role in the country’s federal structure. This account is designed to pool resources from state governments and the federal government to support local governments. While it sounds good on paper, it raises important questions about how power and money flow in Nigeria. Local governments serve as the closest form of government to the people, handling things like roads, schools, and local health services. However, the SJLGA complicates how money is shared and controlled between states and local government councils. In theory, the SJLGA pulls together funds that are collected from various sources. State governments are supposed to distribute these funds to the local governments to aid development. However, in practice, the story isn’t as straightforward. Many local governments often complain about not receiving their fair share, which does throw a wrench in local projects and services.

Who runs the SJLGA? This question is at the heart of the challenge. Often, state governors have too much control over these funds. They can decide how much money local governments receive and what it can be used for. This can be unfair and might lead to unequal development across different localities. Local governments are supposed to be self-sufficient, managing their budgets and planning their projects. When state governors hold the purse strings, it can lead to a lack of accountability.

Local officials might feel they are just waiting for handouts rather than actively managing resources for their communities. This dependence can stunt growth and innovation at the local level.

Conclusion

What can be done to address these challenges? Reforming how the SJLGA operates might be a good start. Ensuring that local governments have more direct control over their finances could empower communities to take charge of their development. Clear guidelines must also be established regarding how funds are allocated and monitored. Consequently, the 1999 constitution should be further amended to provide for full third-tier system with local government having no subsidiary dependence on the federating states.

The State Joint Local Government Account isn't just a financial issue; it's a question of governance. For Nigeria to strengthen its federalism, a reevaluation of how funds are distributed and controlled is essential. Only then can local governments truly thrive and serve their communities effectively. By addressing these challenges head-on, Nigeria can pave the way for a more balanced and empowered federal system. The SJLGA illustrates a critical flaw in Nigeria's federal structure. It highlights the imbalance of power between the state and local governments. A strong federal system should allow local governments to thrive and make decisions that best serve their communities. When they depend on state governments for funds, it can undermine their authority and ability to govern effectively.

References

- [1] Constitution of the Federal Republic of Nigeria
- [2] AGF v AG Abia & 35 ors (2024) 19-21 unreported suit no. SC/CV/343/2024 delivered on Thursday 11th July 2024.
- [3] Nwosu v APP (2020)16NWLR(Pt.1749)28,80 SC.
- [4] Friday v Govr of Ondo State (2022)16NWLR(Pt.1857)585,648 SC.
- [5] Edward v Canada (1932) AC 124
- [6] Ajuwon v Gov of Oyo State (2021)LPELR-55339(SC)
- [7] Calabresi, G.S. "A Government of Limited and Enumerated Powers': In Defense of United States v Lopez" *Michigan Law Review* (1995)(94) 752, 756.
- [8] Kurland, P.B. and R Lerner, eds., "Deficiencies of the Confederation," in Volume One: Major Themes: The Founders' Constitution (Indianapolis: Liberty Fund, Inc. 2000) 147.
- [9] Wood, G.S. *The American Revolution: A History* (New York: Modern Library ed., 2003), 164.