

# Aurora

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**LOCAL GOVERNMENT AUTONOMY IN NIGERIA:  
A REVIEW OF THE SUPREME COURT'S DECISION  
IN SUIT NO: SC/CV/343/2024 - ATTORNEY  
GENERAL OF THE FEDERATION V. A.G.  
ABIA STATE & ORS**

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**INSIDE TOLG ADVISORS**

## **THE LOCAL GOVERNMENT SYSTEM UNDER THE NIGERIAN LAW**

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The Local Government system in Nigeria represents the third tier of the federal system of government established under the Nigerian Constitution. The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides the legal foundation for the existence, structure, and functions of the Local Government Councils which underscores the pivotal role it plays in the nation's governance framework. Nigeria has a total of Seven Hundred and Seventy-Four (774) Local Government Council Areas. Section 7 of the Constitution provides that every State government must ensure the establishment and maintenance of Local Government Councils, which must be democratically elected and governed.

Section 7(1) of the Constitution also provides for the creation and regulation of Local Government Areas (LGAs) by the State governments. The Constitution further grants States the power to establish, modify, or dissolve LGAs within their jurisdiction, subject to the requirements laid down in Section 8. One of the ways that the 1999 Constitution has envisioned the sustenance of the Local Government is by providing that the Local Government is constituted through democratically elected officers considering that it is the closest tier of Government to the people. In other words, the Local Government system is vital for grassroots development through the delivery of essential services specifically management of local infrastructure such as roads and public facilities, collection of rates and taxes, and provision of primary education and healthcare services, etc. to their constituent communities.

The structure of Local Government in Nigeria is designed to facilitate local administration. It typically consists of a Chairman, who serves as the Chief Executive, a Vice-Chairman, and elected Councillors who represent various wards within the Local Government Area (LGA).

Funding of Local Governments in Nigeria is dependent on a combination of federal allocations, internally generated revenue (IGR), and State grants. The primary source of funding is the Federation Account, where Local Governments receive a statutory allocation determined by a formula set by the Revenue Mobilization Allocation and Fiscal Commission (RMAFC). Local Governments also strive to generate revenue through taxes, fees, and levies but often face challenges due to weak economic bases and inefficient tax collection mechanisms.

While State grants can supplement Local Government budgets, they can also undermine the financial autonomy of the third tier of Government thereby leading to political interference by the Executive Arm of Government in the respective States.

This piece delves into the intricate workings of Local Government under Nigerian law, exploring its Constitutional basis, structure, functions, and the myriads of challenges it faces. By examining these issues, the article seeks to provide a comprehensive understanding of the role of local governance in Nigeria's federal system and the ongoing debates surrounding its reform especially on financial autonomy.

## **REVIEW OF ISSUES RELATING TO LOCAL GOVERNMENT SYSTEM /AUTONOMY IN NIGERIA**

No nation can boast of an excellent performance within the public sector especially at the grassroots level if there is no functional local government system or governance structure in place. In Nigeria, the Local Government system has suffered from performance deficiency in the area of service delivery and this has made her citizens to lose faith in the governance structure at the Local Government Areas and by extension on in the both the Federal and State Governments respectively. This lack of performance is due to the fact that they are left at the whims and caprices of the State Governors. We will explore some of the challenges faced by the Local Government in Nigeria:

1. **Corruption:** This is a major challenge in Nigeria as it affects all the tiers of Government. It has been identified as a hindrance to effective and efficient administration at the grassroots. Some of the areas where corruption thrives in Local Government in Nigeria are; the ghost worker syndrome, award of frivolous contracts, abandonment of projects after being awarded, unjustifiable payment to political godfathers, lack of accountability, etc.
2. **Lack of Autonomy:** Autonomy means freedom from external control, but in Nigeria, the Local Government is totally dependent on the Federal and State Governments who control and manage their affairs indirectly, despite having democratically elected Officials. This challenge has hindered the Local Government elected Officials from delivering on the key mandate of this tier of Government to the grassroots.
3. **Leadership Recruitment Challenge:** Ineffective leadership has long hindered the country's development. At the Local Government level, ruling parties often appoint or approve candidates for elections. Without their approval, potential leaders are unlikely to succeed. This opaque process results in widespread underdevelopment, as inexperienced candidates and unelected appointees are chosen to serve the interests of political parties rather than the community.
4. **Administrative inefficiency:** Local governments in Nigeria suffer from administrative inefficiency and ineffectiveness due to low educational qualifications of members of staff, poor remuneration and motivation, autocratic leadership tendencies, poor work environment, favouritism, etc.
5. **Lack of Basic social amenities:** The Local Government administrations' inability to provide essential services such as reliable roads, clean water, consistent power supply, quality healthcare, and education, has led citizens to call for the abolition of the Local Government system in Nigeria.

To address the challenges faced by Local Governments, granting them true autonomy is essential. Local Government autonomy not only respects the historical, cultural, and linguistic aspirations of the community but also brings citizens closer to the decision-making process, enhancing their ability to influence government actions. By decentralizing power, a more inclusive democratic environment is fostered, where locally elected leaders, who understand their constituents' needs better than central authorities, can effectively manage and deliver public services at the grassroots level. This approach not only strengthens democratic engagement but also ensures that Local Governments can operate efficiently and address their communities' specific needs effectively.

## **A SYNOPSIS OF ATTORNEY GENERAL OF THE FEDERATION V. A.G. ABIA STATE & 36 ORS .**

In July 2024, the Supreme Court of Nigeria delivered a landmark judgment affirming the autonomy of Local Government Authorities as the third tier of government. The case presented a number of critical questions and while seeking fifteen declarations along with four orders from the apex Court.

The questions were based on a combined reading of Sections 1(1), (2), and (3), 4(7), 5(2)(a) and (b), 7(1) and (3), 14(1)(2)(a)(c) and (4), and 162 of the Constitution of the Federal Republic of Nigeria 1999, (as Amended). The Plaintiff challenged the constitutionality of State Governments dissolving democratically elected Local Government Councils and replacing them with Caretaker Committees. Additionally, the Plaintiff argued against State Governments receiving and withholding funds meant for Local Government Councils in violation of Sections 1(1), (2), and 7 of the Constitution.

The Declarations sought by the Plaintiff amongst others, include:

- a. That the dissolution of democratically elected Local Government Council by the Thirty-six states of Nigeria, or anyone of them, using the State powers derivable from laws enacted by the State Houses of Assembly or any how so called is unlawful, unconstitutional, null and void;
- a. That any money, including statutory allocations, grants, financial interventions or palliatives that accrues to any of the States for/to the benefit if of its Local Government shall on being received by any such State or its organs or officials, be remitted immediately into the coffers of the Local Government Councils of the State without any deductions and delays or excuses; and
- a. That by virtue of Section . 162 (5) of the Constitution, the amount standing to the credit of Local Government Council in the federation account should be distributed and paid directly to them.

The Plaintiff also sought three orders, to wit:

- a. An order of injunction restraining the Defendants by themselves or through privies from receiving, spending, or tampering with funds released from the federation account for the benefit of Local Government Councils when no democratically elected system is not put in place;



a. An order that the Federation shall pay to Local Government Councils in States directly from the federation account, the amount standing to their credit therein, where the State a has refused or failed to pay each of them or anyone of them, the amount it received or it has been receiving on their behalf; and

a. An order for immediate compliance by the State, with the terms of the judgment of the Court.

The Defendants argued that the failure of some states to hold democratic elections for Local Government Councils was not intentional but rather due to unavoidable circumstances, such as pending litigation. Additionally, they contended that directly paying funds to Local Government Councils would violate Sections 162(5) and (6) of the Constitution, which mandate that such funds be channeled through the State for the benefit of the Local Government Councils.

However, the Supreme Court, while emphasizing Section 162(3), opined that the Constitution did not envisage a joint ownership of funds between the State and its constituent Local Government Councils. The payment of funds to the States was intended merely for logistical convenience, not as a means of granting States control over these funds. The Court further noted that the historical retention of these funds by States has undermined the Constitutional intent, rendering the system ineffective.

It is noteworthy that the Court held the Plaintiff's claims to succeed as it has merit and the reliefs sought are granted accordingly. The case was described as "the people's case against injustice."

## **PRACTICAL IMPLICATION OF THE DECISION OF THE SUPREME COURT.**

### **a. Abolition of Non-Democratically Elected Local Government Councils**

The Supreme Court's judgment has effectively put an end to the practice of appointing non-democratically elected Local Government Councils Executives/Officials, also known as Local Government Caretaker Committees or Administrators. Despite Section 7 of the Constitution's clear mandate on the establishment of democratically elected Local Government Councils, many State Governors have historically bypassed this requirement. Instead of conducting elections, they have opted to appoint various Committees to administer Local Government Areas. This practice has now been declared unconstitutional by the Apex Court, reinforcing the need for adherence to the constitutional provision establishing the third tier of Government in Nigeria. Furthermore, the Apex Court's decision unequivocally renders appointments of Caretaker Committee or Administrators, illegal and void thereby emphasizing the importance of democratic processes for the recruitment of political officials at the Local Government level.

### **a. Direct Payment of Funds Belonging to the Local Government Councils.**

A significant issue raised by the Plaintiff was the long-standing refusal of state governments to remit funds due to Local Government Councils directly to them. Instead of these funds being used for the intended purpose of providing basic amenities and good governance at the respective Local Government Areas, the funds are often withheld and or mismanaged by the State Governments. The plaintiffs argued that to uphold the Constitution's intent, the Federal Government should be allowed to pay these funds directly to the Local Government Councils. The Apex Court in acknowledging this argument did not hesitate to reaffirm and reinforce this Constitutional provision by directing that Local Governments henceforth receive their funds directly through the office of the Accountant-General of the Federation, thus safeguarding the financial autonomy and operational effectiveness of these Local Government Councils as envisioned under the 1999 Constitution of the Federal Republic of Nigeria.

## **a. Local Government Elections**

Following the Apex Court's order for immediate compliance, State Governments have begun preparations to hold elections for their Local Government Councils. States such as: Enugu, Benue, Kebbi, Rivers, Kwara, Katsina, and Osun among others, have announced dates for their respective Local Government elections. This move is a direct response to the Supreme Court's judgment and marks a significant shift towards re-establishing democratic governance at the local level. It is particularly noteworthy that prior to this judgment, more than twenty states were operating without a democratically elected Local Government Councils Council officials. The Court's decision is thus significant and a welcome development, as it reaffirms the principles of democracy and accountability in the administration of Local Government Councils across the country.

The recent judgment on Local Government financial autonomy highlights several key issues, although it may not cover every practical implication. Nonetheless, the judgment's core focus on these areas is clear. Some critics argue that this decision conflicts with Section 162 (6) of the 1999 Constitution, which mandates that funds allocated to Local Government Councils from both the Federation and State Governments be paid into a State Joint Local Government Account. They contend that until this Constitutional provision is amended or repealed by the National Assembly, Local Government Councils cannot be fully independent in receiving funds directly.

Despite this, the judgment is seen as a significant step towards improving democratic governance at the local level. Legal experts have expressed support for the judgment and described it as timely and courageous, as it requires federal payments to local governments directly, bypassing the problematic State-Local Government Joint Account system.

## CONCLUSION

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The need for grassroots development in Nigeria is crucial due to the country's vast land-mass and diverse cultural, linguistic, and societal landscape. Local Government Councils, as the third tier of government, are ideally positioned to deliver essential services and connect government with rural and semi-rural communities. The recent shift away from Caretaker Committees and Sole Administrators, —often appointed by Governors and lacking accountability, —marks a significant change in our political history.

To effectively address underdevelopment, Local Government leadership must be established through transparent, fair, and credible elections. The Supreme Court's recent judgment, which reinforces financial autonomy for Local Governments, allows them to better manage and implement local policies and programs. However, financial autonomy alone does not ensure effective leadership.

It is crucial for citizens in Nigeria's seven hundred and seventy-four Local Government Areas to actively hold their elected officials accountable for resource management. This civic engagement is vital for achieving meaningful development in rural communities. Embracing a bottom-up approach in development policies could significantly reduce rural-urban migration and foster national progress.

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*This Article was written by the Entertainment & Sports, Company Secretarial Services, and the Regulatory Compliance & Consulting Teams at TOLG Advisors.*



**mainstone**  
CONSTRUCTION LIMITED

### **Mainstone Construction Limited's Series 3 Private Debt Note Issuance Exercise**

TOLG Advisors is pleased to announce the successful completion of the N430,041,420.12 Series 3 Note Issuance Exercise under the N3bn Private Debt Note Issuance Programme of Mainstone Construction Limited.

We acted as Transaction Counsel to Mainstone Construction Limited.



**mainstone**  
CONSTRUCTION LIMITED

### **Mainstone Construction Limited's Series 4 Private Debt Note Issuance Exercise**

TOLG Advisors is delighted to announce our successful completion of the N400,000,000.00 Series 4 Note Issuance Exercise under the N3bn Private Debt Note Issuance Programme of Mainstone Construction Limited.

We acted as Transaction Counsel to Mainstone Construction Limited.

Congratulations to our Real Estate Team.



### **Wemabod Financing SPV Limited 's Series 1 Bond Issuance Exercise**

TOLG Advisors is pleased to announce our role as Transaction Counsel in connection with the N3bn Series 1 Bond Issuance Exercise under the N50bn Bond Issuance Programme of Wemabod Financing SPV Limited.

We are proud to be one of the few law firms in Nigeria to advise on such significant transactions in 2024.

Congratulations to our Infrastructure & Project Finance Team.





## The Jazz and Dance Concert 2024: A night of Rhythm and Elegance

Recently, the Tokunbo Orimobi Foundation proudly hosted and co-sponsored the Jazz & Dance Concert 2024. The Jazz & Dance Concert 2024, held on July 21, 2024 at the sophisticated Alliance Francaise in Ikoyi, Lagos, was a memorable night. The event brought together music lovers, dance enthusiasts, and art connoisseurs for an evening of rhythm and elegance.

The concert featured stellar performances by local and international jazz artists, showcasing their unique talents and leaving the audience spellbound. The dynamic dance segment came together to create a vibrant tapestry of sound and motion. The concert was a beautiful reminder of how music and dance unite us all, leaving attendees eagerly anticipating the next edition.



## TOLG Knowledge Sharing Session and Ask Me Series with MO

The Firm hosted a fascinating and informative Knowledge Sharing Session which commenced with a lecture on 'Investment Banking in Nigeria' delivered by Mr Femi Ademola, MD AIICO Capital Ltd. This was followed by the Ask Me Series moderated by our Global Chairman, Mr. Michael Orimobi. These insightful events provided an opportunity for staff to deepen their expertise in their respective areas of practice.



## TOLG Quarterly TGIF Hangout

In light of the Firm's dedication to its culture of Energy, Fun and Sophistication, a day was set out for staff to relax and have fun. This enabled staff to recharge and strengthen their relationships with one another in a relaxed atmosphere.

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**PHONE:**  
+234 (0) 8055190065

**EMAIL:**  
[info@tolegalgroup.com](mailto:info@tolegalgroup.com)

**WEBSITE:**  
[www.tolegalgroup.com](http://www.tolegalgroup.com)

**GLOBAL HEAD OFFICE:**  
The Bolajoko  
15A Remi Olowude Street  
Lekki, Lagos  
Nigeria