

THE STATUS OF LOCAL GOVERNMENT UNDER THE 1999 CONSTITUTION OF NIGERIA: A CRITICAL APPRAISAL

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ABSTRACT

Agitation for a democratically elected local government council in Nigeria gained prominence and momentum between 1974 and 1979. Firstly by the Udoji Public Service Review commission in 1974, followed by the nation wide local government reform headed by Dasuki in 1976 and lastly the 1979 Constitution, the makers actually canvassed and advocated the establishment of democratically elected local government system. The provisions of section 7 of both the 1979 and 1999 Constitutions are in pari material on the subject. Thus, both Constitutions provided for democratically elected local government council. Efforts had been made by some State governments to erroneously hide under the powers given to the House of Assembly by Section 7 to venture into creation of new local governments without recourse to the National Assembly. Furthermore, from all indications State governments are not disposed to granting local government autonomy as third tier of government. For instance, monies meant for local governments as revenue allocated from the Federation Account are still paid direct to the State governments who apply their discretion in the distribution. The State also established what is called “State and Local Government Joint Accounts” for deposits and utilisation of certain sums as the Governor may deem fit. This paper has in very clear terms advocated for financial autonomy of local governments and little or no interference. We believe that it is only when that is done that Nigerians can beat their chest and say there is a third tier of government. Another most critical issue is the lacuna created in the Constitution by not providing the tenure of local government councils unlike the 1995 Draft Constitution which specifically stipulated a term of three (3) years. Unfortunately, not being definitive on the term, the Constitution has left tenure issues to the whims and caprices of the States Governments which negatives uniformity. Consequently, in Nigeria States decide on what tenure to adopt. The corollary of these inadequate provisions of the Constitution is that State governments are at liberty to regard

local government as their appendages. Indeed instead of taking a posture of supervisory role, the State government assume the derogatory posture of total control over local governments. The State governments also established Local Government Services Commission which is not recognized by the Constitution. This is an instrument through which the activities of local government are put under control and litmus test by state governments. We are of the firm view that local governments should be effectively positioned and managed being close to the grassroots. This can be achieved by putting a machinery in place for effective control of corrupt practices thereby making them to develop resilience to appropriately cope with enormous socioeconomic challenges. Rather than advocating dissolution of local governments efforts should be garnered to strengthen and sustain local governments as third tier of government in Nigeria.

Keywords: *Local government; the constitution; structure; powers and functions; revenue; tenure*

INTRODUCTION

Government" has been defined by the Black's Law Dictionaryⁱ in the following words :

the instrument, the helm, whereby the ship to which the state was compared, was guided on its course by the "gubernator" or helmsman, and in that view, the government is but an agency of state, distinguished as it must be in accurate thought from its scheme and machinery of government.

In the United States, government consists of the executive, legislative, and judicial branches in addition to administrative agencies. In a broader sense, it includes the federal, city and township governments.

The same dictionary has defined Local Government as follows:

The government or administration of a particular locality, especially, the government authority of municipal corporations, as a city or county, over its local and individual affairs, exercised in virtue of power delegated to it for that purpose by the general government of the state or nationⁱⁱ

Ordinarily, it would sound elementary to embark on definitions of terms especially in relation to government or local government. But its relevance stems from the topic of this paper as a major link that would ensure effective appreciation of the subject matter. The most crucial deduction we can make from the above definitions of government is that the federal, state and local governments are agencies of state or nation which delegates powers to them. The above definitions offer a simplistic memorandum of the nature, and scope of a local government and the source of its powers.

Local administration has been recognized before independence in the colonies that later made up what is today called Nigeria. What was experienced in the North was a predominantly monolithic set-up while there was the repugnant posture of orthodox native administration in the southⁱⁱⁱ. However, between the 1960s and early 70s, the processes of transformation and transition into democratically multi-purpose single-tier local government authorities had commenced in all parts of the country. At this time, local authorities were faced with the problems of instability, operationally faulty and sentimentally regionalized, setting. The quest for a stable local government structure became a national priority. This quest was to

complement the idea of federalism which needed the evolution of a uniform system of local administration that will be more responsive and responsible to the people at the grassroots. This has been the original idea nurtured by Sir Aurthur Creech-Jones who in 1947 said:

The essential and permanent objective of the British policy is to bring forward the African territories to self-government responsibility within the Commonwealth. To that end, an evolutionary process towards more liberal, representative and responsible political institutions is going on. Progress, however, depends on developing the African communities a sense of community obligation and social responsibility and service. In this, local government plays a conspicuous part^v".

This well perceived aspiration formed the basis of the dispatch sent to all British colonies in 1947. As succinctly put, by Bello-lmam, the dispatch gave African Governors the duty of developing, as a matter of utmost urgency, an efficient and democratic system of local government. It emphasized that the policies of political, social and economic development to which the British government was at least committed in Africa could not be realized without the participation of the people acting democratically through elected councils^v.

It is believed that the combined effect of the aspiration of the colonial masters and the exposure of Nigerians to the features appurtenant to modern local governments provoked the search for a virile local government system. Thus Udoji Public Service Review Commission of 1974, the nation-Wide local government reform headed by Dasuki in 1976 and finally the makers of the 1979 Constitution canvassed and finally established a democratically elected local government system^{vi}. Over the years Nigerians have cried against leaving local government at the mercy of the State. Whether the local governments are mere appendages to the State can easily be discerned from the creation, structure, powers (if any), funding and functions.

Without going into the rhetorics of the evolution of local administration it is pertinent to say a little on its historical development.

Unfortunately, between 1979 – 1983 which was the second Republic, local government elections were not held leading to:

- (a) Establishment of caretaker committees at local governments;

- (b) Governors hijacking the funds in the state joint local government account for selfish purposes;
- (c) The Shagari's administration crippled the local government the more by reducing their allocation from 10% to 8% of the National Revenue^{vii}.

When Shagari's government was toppled in December 1983 the military sacked the care taker committees and installed sole administrators. When Babangida took over, he cancelled the sole administrators and introduced executive Chairpersons and Vice, a legislative council structure and paid allocations direct to the joint Accounts. Babangida further created more local governments in 1987, 1990, 1991 which then put the total local government to 593. He increased revenue allocations from 10% to 15% and in 1992 it rose to 20%. He held elections with a view to achieving a third tier of government

CREATION OF LOCAL GOVERNMENT

Section 7(1) of the 1999 Constitution provides:

- (1) The system of local government by democratically elected local government councils is under this Constitution guaranteed: and accordingly, the government of every State shall, subject to Section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure composition, finance and functions of such, councils, (underlining ours).

From this constitutional provision, it must be clearly understood to mean that the Constitution has failed to establish local government. It has only guaranteed that local governments shall be established by the State Government through laws passed by the House of Assembly of each state to that effect. In other words, if a House of Assembly fails to pass the local government laws, any local government operating within such state will be illegal. Consequently, the source of legal personality of the local government (giving it power to sue and be sued) is shifted to the House of Assembly to initiate. This is an unhealthy development that calls for immediate amendment. The Constitution itself must clearly establish the local government councils. It is obvious that not all the thirty-six States of Nigeria have passed laws establishing their local governments. It may be erroneously argued that there have been existing local government

laws which shall be deemed to serve for that purpose. Even some States that have local government councils have refused or neglected to conduct elections for many years as a result of the inadequacies of the Constitutional provisions on local governments.

During the military era, the Federal Government promulgated decrees which were applied nation-wide but by virtue of section 7 of the 1999 Constitution, those decrees can no longer be deemed to be in force.

The House of Assembly of each state must make laws to establish their local government councils. The implication is that any State whose House of Assembly has not passed local government laws is running a risk of operating illegal local government councils. It is only when the House of Assembly makes such law that a local government is created with full force of law after the assent of the National Assembly has been sought and obtained. What the Constitution has done in Section 7 is at best to give powers to the State House of Assembly to establish their local government councils with the approval of the National Assembly.

We humbly suggest that section 304 of the Draft 1995 Constitution which states "There shall be a Local Government Council for each Local Government Area in the Federation" and the specification for a definite term of years for the life of local governments in Nigeria ought to be incorporated into the 1999 Constitution by way of amendment.

PROCEDURE FOR CREATION OF A NEW LOCAL GOVERNMENT UNDER THE 1999 CONSTITUTION

a) The Role of the House of Assembly of a State

i) Creation:

The Constitution has clearly provided the procedure for creation of new local governments. We have already referred to Section 7 which empowers the State Government to make laws which will provide for the establishment, structure composition, finance and functions of such Local Government Councils.

By Section 8(3) of the Constitution a bill for a law of a House of Assembly for the purpose of creating a new local government area shall only be passed if the people

demanding for one, approve same by a referendum. The Constitution also requires the approval by a resolution passed by two-thirds majority of members of the House of Assembly in support of the creation.

ii) Boundary Adjustment

It is pertinent to note that in the process of creating new local governments there is always the need for definitiveness of boundaries. Section 8(4) provides the procedure for adjustment of local government boundaries.

b) The Role of the National Assembly

After the House of Assembly of a state must have completed its assignment in enacting a law providing for the creation of local government and boundary adjustment, that is not the end of the matter. The Constitution has imposed responsibilities on the National Assembly in that regard.

Section 8(5) provides thus:

“An Act of the National Assembly passed in accordance with this section shall make consequential provisions with respect to the names and headquarters of states or local government areas as provided in Section 3 of this Constitution and in Part 1 and 2 of the first schedule of this Constitution”

In a similar vein Section 8(6) provides:

“For the purpose of enabling the National Assembly to exercise the powers conferred upon it by Sub-section (5) of this section, each House of Assembly shall after the creation of more local government areas pursuant to Sub-section (3) of this section, make adequate returns to each House of the National Assembly.”

From the foregoing provisions of the Constitution, it is clear that after the State has exercised her powers by initiating the process of creating new local governments the National Assembly has to pass an Act that will incorporate the names and headquarters of such newly created local governments in the Constitution. The only way this can be done is by way of altering the provisions of the Constitution. This reasoning is informed by the copious provisions of Section 3(1) of the Constitution which has stipulated the thirty-six (36) States of the Federation.

Furthermore, the local governments that make up the thirty-six (36) States created under Section 3(1) are listed in the First Schedule (Part 1) of the Constitution.

The only reasonable inference we can draw from these provisions is that creation of local government requires amendment of the Constitution through an Act of the National Assembly.

It is also instructive to note that where a State goes ahead to initiate the process of creating new local governments pursuant to Section 8 of the Constitution such exercise will be in futility if the assent of the National Assembly is not obtained.

c) Mode of Altering Provisions of the Constitution

The Constitution can only be altered or amended by the Act of the National Assembly made pursuant to sections 9 (1) (2) (3) and (4) and this also concerns the creation of new local government councils which needs amendment of the constitution and boundary adjustment of the Constitution and Boundary adjustment.

To alter the provision of the Constitution under Section 9(2) not less than two-thirds majority of all the members of each of the Houses of the National Assembly shall vote in support of the proposed alteration.

The powers of the National Assembly to alter or amend the Constitution cannot be impeached nor inhibited in any manner by any act of the State House of Assembly.

In determining whether to grant its assent to a proposal for creation of new local governments, the National Assembly takes revenue allocation and viability of the proposed local government into consideration.

For instance, Section 7(6) of the Constitution provides:

“(a) The National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federation”.

It follows therefore, that the National Assembly has to be careful in assenting to proposals for creation of new local governments especially where there is doubt that such local government when created would not be buoyant enough to survive.

STRUCTURE

When we talk about the structure of local government in Nigeria, much references are made to the presidential system. Basically, this connotes a system of government where the executive powers are vested in the President as stipulated by law. At the Federal and State levels, the executive of the government and its functions is covered mostly by specific grants of powers in the Constitution of the Federal Republic of Nigeria^{viii}. At the local government level the execution of powers are vested in the chairman according to the law made pursuant to the Constitution by the State House of Assembly. In other words the presidential form of arrangement at the state and federal levels should be replicated more or less in the same form at the local government level. What this means is that the chairman of a local government is elected directly by the people in the local government area, and not by the elected local government council members from among themselves. In other words, the chairman's election by the people places him in a separate position from the council as it is the case with the Governor and the President who are separated from the legislature. This arrangement is an ingredient of separation of functions. The Chairman becomes the Chief Executive while the council is the legislature. Where supervisory councilors are appointed, they are not members of the councils and so cannot participate in making byelaws. They are mere assistants to the chairman. The chairman is exclusively responsible for the functions of the local government. Thus John Stuart Mill clarified the positions in the following words:

Admitted, in the countries in which the representative system is practically understood, the numerous representative bodies ought not to administer. The maxim is granted not only on the most essential principles of good government, but on those of the successful and under command, is fit for action, in the proper sense. Even as select board, composed of few members and those specifically conversant with the business to be done, is always an inferior instrument to some one individual who could be found among them, and would be improved in character if that one person were made the chief, and all others reduced to subordinates. What can be done better by the body than by an individual is deliberation. When it is necessary or important to secure hearing and consideration to many conflicting opinions a deliberative body is indispensable. Those bodies, therefore, are frequently useful, even for administrative business but in

general only as advisers, such business being as a rule better conducted under the responsibility of one^{ix}.

We have reproduced Mill's proposition extensively to support the long-standing view that the local government should be raised to the same constitutional status as third tier of government under a presidential system. To further justify the need for a council which should be charged with legislative functions with the local government, we look at the capacity of local government councillors. under the Constitution.

The 1999 Constitution has in a way provided for the qualification for election to a local government council. Section 7 (4) provides:

The government of a state shall ensure that every person who is entitled to vote or be voted for an election to a House of assembly shall have the right to vote or be voted for at an election to a local government council.

What this provision means is that the qualification to vote and to be voted for into the House of Assembly of a state also qualifies a person to be voted as councilors or chairmen of a local government council. Section 106 (c) provides for the qualification to vote and to be voted for into the House of Assembly of states:

Subject to the provisions of section 107 of this constitution a person shall be qualified for election as a member of a House of Assembly if:-

(c) he has been educated up to at least the school certificate level or its equivalent..."

The above provision regarding qualification is very ridiculous. The question is how do we expect a person with first school certificate to have the capacity to assume the position of the chairman or councilor (legislative arm) of the local government. That puts a question mark on the foundation of the structure of both the chairman and councilors. The educational requirement is very low. We suggest that the minimum requirement should be West African School Certificate while higher degrees are added advantage. Supporting this position Ozohu-Suleiman Abdulhamid and Paul Chima had this to say;

Similarly, Section 106 of the 1999 Constitution provides that the minimum qualification for election as chairperson or councilor in a local government shall be the post –

primary school certificate. This low threshold has made a career in the local politics unattractive. A poorly-educated political officeholder who is also inexperienced in the art of governance can hardly offer meaningful leadership.^x

Going further, Mills assert:

There is hardly and kind of intellectual work which so much needs to be done, not only by experienced and exercised minds, but by minds trained to the task through long and laborious study, as the business of making laws. A reason no less conclusive is, that every provision of a law requires to be framed with the most accurate and long-sighted perception of its effect on all other provisions, and the law when made should be capable of filling into a consistent whole with the previously existing laws.

Clearly Mill advocates separation of powers and functions between the Chairman and the Councillors at the local government level. Ideally this is what it should be. But one qualification attached to it is essentially that the law-makers should be specifically trained and skilled for that. The question would be whether councillors in Nigerian local government councils are so trained. Be that as it may charting a system is one thing, another is ensuring efficiency and effectiveness which could be achieved through training and retraining. It is not doubted that Nigerians have for long advocated for such a presidential system of governance at the local government level. The general idea has been to put local government in positions where they would not be subjected to the cavalier and whimsical tinkering and suppression by the state government who from time to time treat them as mere appendages. Consequent upon the foregoing, critical examination of most state local government laws in conjunction with the gaps in the 1999 Constitution will sufficiently provide an answer to the actual status of local governments under the present political dispensation.

Lending his voice in the discourse, Bello-Iman aptly pointed out thus:

The administrative structure of local government determines the relationship between the various organs and also balances the apparently opposing purposes thereby preserving its inherent character and strength. Administrative structure is not therefore an end in itself but is an indispensable means to the end of government performance, in that case, the provision of services. It can also increase or decrease the effectiveness

of those who operate under it and even make the getting and retraining of able men more or less likely.^{xi}

The structure of any government represents its skeleton, its identified organs or units in a well classified context. The task of any system of local government should be whether it provides a state structure capable of discharging efficiently the functions entrusted to it, while at the same time maintaining its democratic character^{xii}.

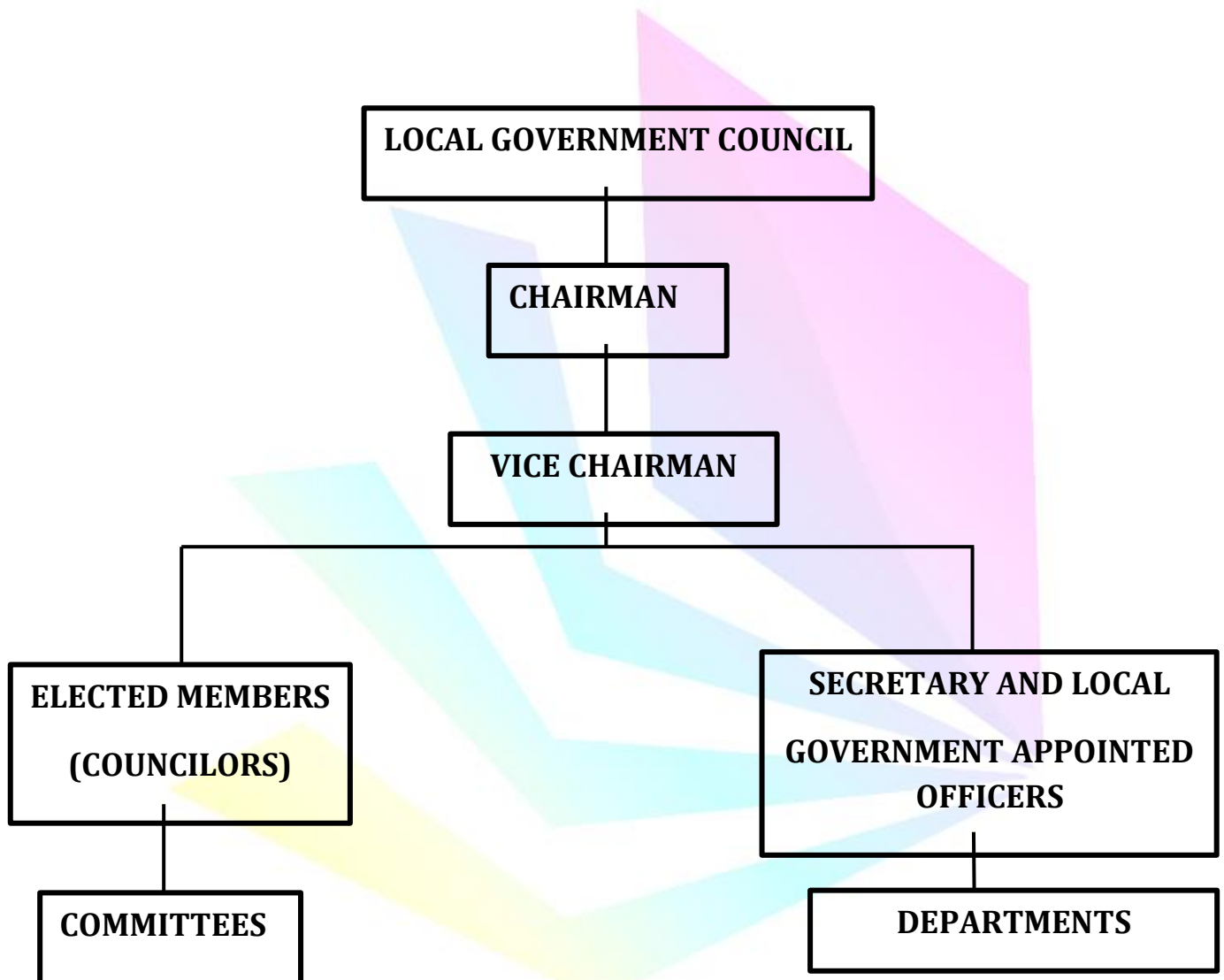
What we propose as structure looks like the table below as an example, and not a model. The problem we find here is that composition is taken to be synonymous with structure. But structure is a skeleton as stated earlier in this discussion, composition goes further to give details. The structure therefore constitutes the formal static structure while we can refer to internal composition as the informal kinetic structure. The law must be clear on the structure and composition as provided for in the Constitution. The structure has to do with the assignment of functions which must also be clearly identified in the law. The matter is made worse by the attitude of the state Houses of Assembly and the Governors. Page and Wando had cried out when they said:

External Bureaucratic and Financial Interference also causes governance failures, fuels corruption, and perpetuates the problematic over-centralization of local government functions in the hands of gasping state elites. Primarily responsible for this interference, state governors use a variety of official and unofficial mechanism-many of which are entirely legal and constitutional – to short-circuit local political and financial autonomy. Some have even placed political appointees in each local government in their state to increase their informal control over local government decision making.^{xiii}

From what have been said under the structure of local governments, the Constitution needs to be radically amended to ensure that states and legislative interference and control is minimized. The situation is seen to have worsened the capacity of local government vis-à-vis the financial capacity to perform their functions because the upper departments of government are in the guise of control, rendering them financially impotent. Here top-down interference is a dangerous norm that nearly all the states have adopted in Nigeria to reap what does not belong to them when it is otherwise a practice known as kleptocracy.

By leaving the Structure to individual States means that a uniform local government structure is not contemplated for Nigeria. We suggest that a uniform structure must be provided for in the Constitution. We like to emphasis that the administrative or operational structure of local government is vital in ensuring its stability, as earlier echoed by Bello-Imam.

PROPOSED STRUCTURE



From the above table, the chairman is the Chief Executive assisted by his Vice and elected councilors on the one hand. On the other hand, the secretary leads the appointed officers. Unfortunately, the structure represented here is not contained in the 1999 Constitution. It is a serious omission and calls for amendment. The structure cannot be left to the whims and caprices of the House of Assembly. Nigeria must adopt a uniform structure for local government otherwise there is no seriousness in the quest for a stable local government system as a third-tier of government. The powers vested on the State Government to create the structure of any local government within the State also gives them the power to establish “wards; which is part of the structure we are talking about that needs to be statutorily prescribed.

POWERS OF LOCAL GOVERNMENT

It is regrettably observed that the Constitution does not contemplate giving any powers to the local government. In fact, they have none. Even the law to be made by the House of Assembly would not provide any powers. All that the law of a House of Assembly should contain are establishment, structure, composition, finance and functions. Furthermore, a distinction must be drawn between powers and functions. The functions of the local government can only be derived from the powers given to it. The functions are stated in the fourth scheduled to the Constitution without corresponding powers.

Certainly, the powers of any government are the executive, legislative and judicial. Without these powers given to the local government in the Constitution, it clearly means that the local governments are not third-tier of government in Nigeria. The impression given to Nigerians is that local government constitute third-tier of government but in real terms they are not. They have no powers of their own under the Constitution and this is a serious problem that calls for amendment. The same Constitution has established executive, legislative and judicial powers of the Federal and State Governments but left the local Government powerless.

Furthermore, the 1995 Draft Constitution which has metamorphosed into 1999 Constitution had in its Chapter VIII established and given powers to the local government^{xiv}. It is irking that the whole of that chapter was abandoned by the producers of the 1999 Constitution. We suggest that, that portion of the Draft Constitution ought to be lifted to form part of the 1999

Constitution following immediately after section 212 of the Constitution. Section 7(3) of the Constitution provided for duties of the local government in the area of development. We submit that duties are not the same as powers. Duty only supports the existence of an obligation to satisfy an existing right on the one side. The powers of the local government need to be clearly enshrined in the Constitution to avoid conflict with the State governments. It is also believed that stating the powers of the local governments in the Constitution will cancel the possibility of the State Government passing laws that will render local governments impotent.

For instance, in *Alhaji Sultan Prince Adeniji-Adele & 40rs V. Lagos State*^{xv}, the government without any inquiry dissolved the existing local government councils and appointed chairman and 23 management committee members to manage the dissolved councils pursuant to a law^{xvi} he enacted for that purpose. The law was held unconstitutional not being in conformity with the system of the democratically elected local government as guaranteed by the 1979 Constitution. A similar problem was evident in the case of *The Governor Of Kaduna State V. A.G. Of Kaduna State*^{xvii}. The most recent case is that of *Knight Frank & Ruteley Nigeria & Or V. Attorney General-General Of Kano State*^{xviii} Where the Kano State Government awarded contract to the appellants (Knight Frank & Ruteley Nigeria) to prepare a valuation list of all rateable hereditaments for the collection of property rates in respect of some areas in Kano State by the Commissioner for Finance of Kano State.

The main issue that was canvassed in that case at the heat of dispute between the parties over the contract was whether the State Government through the Commissioner for Finance had the capacity to award that contract.

It was held by the Supreme Court among others inter alia:

- a) With the exception of the items under the Concurrent Legislative List, each of three tiers of government exercises exclusive power over the subject under its control,
- b) It is clear from the provisions of paragraph 1 (b) and (i) of the Fourth Schedule read together with the provisions of section 7 subsection (5) of the 1979 Constitution that only Local Government Councils have the power to assess and impose rates on private owned property.

- c) It follows that only the Local Government Councils have powers to enter the type of contract entered by the Commissioner for Finance.
- d) The State Government will be acting ultravires in exercising powers over subject-matters not within their area of control as may be demarcated by the Constitution and the Local Government Edicts.

It is rather unfortunate that most of our State governments are particeps *criminis* in this regard. The Local Governments who have Suffered as a result of this error keep quiet due to ignorance or lack of awareness of their rights or as a result of tardiness of the laws as well as the gaps in the Constitution. We advocate that lawyers should be employed by every Local Government to assist in handling most of these legal issues or at best educating the chief executive.

SOURCE OF REVENUE UNDER THE 1999 CONSTITUTION:

Sections 7(6), (a) and (b) of the 1999 Constitution provides that the Federal and State Governments shall make provisions for statutory allocations of public revenue to local government councils in the Federation. With humility, these provisions are vague. The Constitution must specifically state what percentage of the money from the Consolidated Revenue Fund of both the Federal and State should be set aside for local governments and that such monies shall be remitted to them directly. A similar provision to those of Sections 7(6) (a) and (b) is section 162 (5) which states that:

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.

Furthermore, Section 162 (6) provides:

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

Our reactions to these provision are centered on:

- (i) The fact that monies meant for the local government are paid from the federation account to the state on behalf of the local governments.
- (ii) Distribution of allocations shall be as prescribed by the House of Assembly of the State:

The situation does not work because the House of Assembly is under the control of the Governor and he wields too much influence over members of the state House of Assembly. There is therefore the likelihood that both the executive and the legislative at the state level may collude in releasing amount far less than what is due to the local government. We respectfully suggest that just like allocation due to the state are remitted direct to the state Account from the federation Account, same should apply to the local governments. This is the only way to ensure that allocations for the local governments are not tempered with. In the same way, we categorically say that the “State Joint Local Government Account” as well as the “Local Government Service Commission” are conduits for fraud and should be abolished. A Constitution which is the grand design of the nation should not be seen blocking and blocking the fundamentals and necessities for which it is made. This issue is very vital in view of the fact that no local government can survive without adequate funding. The functions assigned to the local government under the Fourth Schedule of the Constitution are enormous. These are:

- a) The consideration and the making of recommendations to a State commission on economic planning or any similar body on
 - i) the economic development of the state, particularly in so far as the areas of authority of the council of the State are affected, and
 - ii) proposals made by the said commission or body;
- b) Collection of rates, radio and television licences;
- c) Establishment and maintenance of cemeteries, burial ground and homes for the destitute or firm;
- d) Licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;

- e) Establishment, maintenance and regulation of slaughter house, slaughter slabs, marketers, motor parks and public conveniences;
- f) Construction and maintenance of roads, streets, street streets lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;
- g) Naming of roads and streets and numbering of houses;
- n) Provision and maintenance of public convenience, sewages and refuse disposal;
- i) Registration of all births, deaths and marriages;
- j) Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of Assembly of a State; and
- k) Control and regulation of-
 - i) Out-door advertising and hoarding,
 - ii) Movement and keeping of pets of all description,
 - iii) Shops and kiosks,
 - iv) Restaurants, bakeries and other places for sale of food to the public,
 - v) Laundries, and
 - vi) Licensing, regulations and control of the sale of liquor.

The function of a local government council shall include participation of such council in the government of a State in respect of the following matters:

- a) The provisions and maintenance of primary, adult and vocational education;
- b) The development of agriculture and natural resources, other than the exploitation of minerals
- c) The provision and maintenance of health service, and

- d) Such other functions as may be conferred on a local government council by the House of Assembly of the State.

Dr. Obinna has on his part adumbrated an illuminating policy for the Local government when he said:

Local governments are expected to cooperate with the national Government in contributing to the maximization of general welfare by providing the foundation for the substantive function of government, hereby acting as an engine of social and economic betterment. A society may resort to local government for leveling out excessive inequalities in the distribution of wealth, for checking inflationary profiteering and for promoting economic and political stability. They are expected to carry out regional policies with respect to agriculture and selected industries thereby helping to ameliorate unemployment.

Local government functions also include responsibilities for general sanitation, sewage disposal, rural health, feeder roads, market stalls, motor parks, play grounds and cottage industries^{xix}

A local government require adequate financial resources to carry out these numerous functions and other expectations. It makes no sense leaving the issue of allocation of revenue to the discretion of the State government and even the Federal Government. Admittedly, the Federal Government would have allocated 25% of her revenue to the local governments while the States are silent on what they will allocate. The danger is that States may and as usual prevaricate to the detriment of the local government who stand to fail in their performance due to lack of funds.

TENURE OF LOCAL GOVERNMENT COUNCIL

The Constitution has also failed to provide for the tenure of local government as stated earlier in this paper. It is this lacuna that has given rise to the varying resolutions in the Houses of Assembly on what the tenure of local governments should be. Some States have opted for two years while majority have settled for three years. This is very ridiculous. It has given room for the local government functionaries to resort to lobbying members of the Houses of Assembly

so that they can pass bills favouring longer tenure. This floodgate for corrupt practices would have been easily abated by simply incorporating into the Constitution specific tenure for local governments. For instance, section 304 (2) of the 1995 Draft Constitution states: "A Local Government Council shall stand dissolved at the expiration of a period of three years commencing from the date of the first sitting of the Council"

We have already observed that the whole Chapter VIII of the Draft Constitution 1995 which provides for the establishment of local government Councils and other related matters was abandoned by the final producers of the 1999 Constitution. We most humbly say that this is fraudulent because that Chapter is abandoned against the decisions and wishes of the people who were constituted as representatives of their communities in the Constitution Drafting. By that Draft Constitution, it was the decision of Nigerians that the local government should be in all intents and purposes, a third-tier of government with almost all the features like the Federal and State Governments though at the lowest or grassroots level. What the final producers of the 1999 Constitution have achieved is to reduce local government to nothing but mere appendages to State governments. That is automatically sending the nation backward. The National Assembly have no choice than to amend the Constitution. Nigerians have in clear terms expressed their desire to enthrone a local government system that is to a large extent autonomous and effective.

CONTROL

Under the present dispensation a Local Government Service Commission is now abrogated. Section 197 (1) of the 1999 Constitution (as altered) makes provision for the establishment of only three State Executive bodies namely:

- a) State Civil Service Commission;
- b) State Independent Electoral Commission; and
- c) State Judicial Service Commission.

It is not a matter of discretion for the States to on their own establish Local Government Service Commission. Where a State goes ahead to establish one it is ultravires the Constitution, and all

such bodies have no legal backing. Section 197 is restrictive and there is nothing anybody can do about it. By establishing the Local Government Service Commission, it means the State is directly controlling the local governments. We do not think that is what Nigerians want now.

The Constitution has made provisions for Code of Conduct for Public officers in its Fifth Schedule which must be observed by all local government staff and officers and so renders the establishment of local government service commission is necessary.

CONCLUSION AND RECOMMENDATIONS

We like to emphasise that the idea of raising the status of local government to a third-tier of government is most welcome. The advantages are enormous notwithstanding the glaring corrupt practices which local government functionaries like their counter-parts at State and Federal levels indulge in. That aspect is a national problem which is being tackled both at national and international levels. But for sure, if corruption is controlled at the local government level, the need for local government will be highly appreciated by Nigerians. It is unfortunate that from the observations made in this paper, the 1999 Constitution has failed to make provisions that will establish local government as third-tier of government. It is believed that what Nigerians want now is a system of local government as third-tier of government in Nigeria. In other words, making them to be mere appendages to State government may not be the best. The argument currently advanced by people is that local government functionaries in Nigeria are not matured to act independent of the State. Some say there is large-scale corruption at local government level. With due respect to those who proffer such argument there is hardly any officer or personnel of local government who is not matured to take proper initiative. On the other hand, the problem of corruption is nationwide. Corrupt practices are more endemic at the State and Federal levels. Just like it is hoped that one day other Nigerians will eschew corruption, that may also be the case with local government functionaries. In the same way, when the qualification and exposure/capacity of those to occupy federal and state positions are raised, then higher qualifications will also be required for operators of the local government for effectiveness and responsiveness. When that happens, we shall all enjoy the overall sanitized society. Considering the significant role local government plays in our body polity, we need to nurture and project them effectively until they attain the desired level of maturity.

The Constitution must clearly spell out the functionalities with re-defined structure, powers and functions of all the organs. Fluidity in definition of roles of local government functionalities is capable of fueling intra-council crisis that can immobilize local government. The Constitution must contain in it similar provisions like those affecting the Federal and State Executive bodies. If that is not done, the natural consequences will be that State Governments will utilize their powers to the detriment of local governments and continue to meddle with their affairs by particularly castrating them financially and even render them economically, politically and socially hamstrung. Nigerians have over the years cried against such situation and that gave birth to the various local government committees and reforms constituted with the hope to fashion out a structure that will elevate local governments beyond being mere appendages to the States.

In the same vein, the powers of the local government must be spelt out clearly in the Constitution. It is not practicable to give somebody functions to perform without corresponding powers on which the functions will rest. That is a serious lacuna in the 1999 Constitution and ought to be amended without further delay. To perform their functions effectively local government should be clothed with financial autonomy whereby monies due to them from the federation account or elsewhere shall be paid directly to them, not through the state. Also there should be abolition of local government joint account. It is unconstitutional to set up a Local Government Service Commission when the Constitution did not permit that.

In another breadth, State Governments should be slow in initiating processes aimed at creating new local governments and if they do, it is imperative that they must ensure that such new local governments acquire the required constitutional status before their operations take off.

Finally, the Constitution should as a matter of priority contain provisions that will rather promote the status of local government than reduce it. The position as it is in the 1999 Constitution is such that local governments are reduced to nothing. In other words, the 1999 Constitution has taken local governments back to what they were before the Dasuki Panel Report in 1976.

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ENDNOTES

ⁱ Henry Campell Black, Black's Law Dictionary, Sixth edition Boston: (1990) p.695

ⁱⁱ *Ibid*

ⁱⁱⁱ See Ekumankama, D.U: "The Law and Development of Local Government in Nigeria" (Makurdi: 1996) p.17

^{iv} Creech-Jones, A; The place of African Administration in Colonia Policy, Journal of African Administration, Vol. 1, 1994; p. 3-5 in Kirk-Greens, A.H.M (ed).. The Principal of Native Administration in Nigeria, 1900-47 (London, 1965) p. 245.

^v Bello-Imam, I.B., Local Government Structure in Britain and Nigeria -A Study of Structural Evolution, NISER Monography Series No. 12 (Ibadan: 1983) p.24

^{vi} See Section 7 of the 1979 Constitution of the Federal Republic of Nigeria

^{vii} See Mathew T. Page and Abdul H. Wando: Halting the Kleptocratic Capture of Local Government in Nigeria –July 18, 2022. Source: Getty-A detailed account was given in this paper on the position of local administration since 1950 to date.

^{viii} The 1999 Constitution of the Federal Republic of Nigeria.

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^x *Supra* p, 254

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^{xi} Bello –Imam, I.B. Local Government Structure in Britain and Nigeria. A Study of structural evolution: NISER monographs series No. 12 p.1

^{xii} This view has been supported by the British Government on the area and structure of local authorities in England and Wales in the early years

^{xiii} See Mathew T. Page, Abdul H. Wando, Halting the Kleptocratic Capture of local government in Nigeria, July, 18, 2022; Source, Getty P. 13

^{xiv} See Section 304-331 of the 1995 Draft Constitution (that is the whole of Chapter VIII)

^{xv} (1982)3 NCLR 698 at 716

^{xvi} The Lagos State Local government (interim Provision) Law, 1980

^{xvii} (1981) NCLR 444 at 451-452

^{xviii} (19098) S.C.N.J. 167

^{xix} Obinna, O.E, Local Government Financing (Obosi-Anambra State: 1988) p.3