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PROBING THE CONSTITUTIONAL ROLE OF STATE HOUSES OF ASSEMBLY IN LOCAL GOVERNMENT GOVERNANCE

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Abstract

The Nigerian Constitution guaranteed a system of local government by way of democratically elected councils. However in recognition of the powers of the States in the conduct of local government, the Constitution granted the State House of Assembly power to establish the councils and define their composition, structure, functions and finance, among others. This paper, utilising doctrinal method, will review the constitutional, statutory and judicial authorities that are germane to the challenges confronting local government administration in Nigeria, emphasizing the overreaching influence of the State House of Assembly in the area. The paper concludes by proffering solutions, inclusive of constitutional reforms, towards the betterment of the system.

1.1 Introduction

In most federal systems, local governments are the preserves of the state governments and the powers of the federal government concern more of exclusive and concurrent while the residual are left with the state governments.[1] Local government is a representative of central (state) government,[2] designed to govern a small area of population. It is also an instrument for the provision of social services with the ultimate objective of transforming urban metropolis and rural areas. Local Governments was at inception administrative creation of the

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[1] Usman Abubakar, "Relationship Between Local Government and State Bodies Responsibilities for Local Government Administration in Kaduna State", (Paper presented at Induction Programme for Elected Local Government Councillors, 26th – 27th July, 2018).

[2] The Nigerian Constitution made Local Government a residual matter thereby making it subject of the legislative powers of the State as hinted to in section 7, Constitution of the Federal Republic of Nigeria, 1999, Cap C32, *Laws of the Federation of Nigeria 2004* (as altered).

Regions/States, not the subject matter of constitutional concern, as their creation and abolition were matters solely within the legislative/executive authority of the Regional or State Governments as determined by law.[3]

In Nigeria local administration is principally aimed at bringing government closer to the people and the rendering of services that are necessary for the well-being of the local communities. Local self-government is meant to provide a training ground for informed and effective participation by the citizen at the higher levels of the state and federal governments. But it makes no sense to train and educate the local citizen in a system of government different from that he is going to encounter at the state and federal levels. It follows therefore that a presidential form of organisation at the state and federal levels should dictate more or less the same form at the local government level.[4]

The Nigerian Constitution, charged the legislature with the responsibility of enacting laws for the good governance of the country or the state, as the case may be. Local government affairs being residual matter within the preserve of the State Government, the applicable legislature is the State House of Assembly, upon which the constitutional obligation of among others ensuring the sustainability of democratically elected Local Government ensues. This constitutional and legal recognition of the powers of the State Governments over the Local Government Councils, primarily exercisable by the State House of Assembly, led to so many legal challenges in the administration of local governments in Nigeria. These challenges include among others, absence of full constitutional autonomy, interference in the activities of the Local Government Councils and the exploitation of constitutional loopholes in areas such as the State Joint Local Government Account. This paper will make a critical analysis on whether the challenges bedevilling Local Government administration in Nigeria are rooted in the choice of the system expected to be applicable to Local Government Councils throughout Nigeria, or whether the problems are to be situated elsewhere, especially in the relationship of the Councils with the State Governments through its legislative arm. This is to be done with a view of proffering solutions towards effective local government administration in Nigeria.

1.2 Local Government Creation and Boundary Adjustment

[3] Oyelowo Oyewo, *Local Government Law: Cases and Materials*, (University of Lagos Press and Bookshop, 2016), 113.

[4] BO Nwabueze, *Ideas and Facts in Constitution Making*, (Spectrum Books Limited, 1993), 248.

In transforming the Local Government from administrative appendage of the States into a Constitutional third tier of government, the Constitution provided for the number of local government areas within each State of the federation, and specifically stipulated the procedure for the creation or alteration of the local government areas within each State of the federation. A combined reading of *sections 7 and 8(3) & (4) of the 1999 Constitution*, could give the impression that the Constitution confers power on the states to create local governments. However, the same Constitution in section 8(5) reposes in the National Assembly the powers to make consequential provisions with respect to the names and headquarters of new local governments in line with the Constitution.[5] There then is the quandary in the unsuccessful attempts by civilian administrations to create new local government areas in Nigeria. The constitutional requirements that requires not only the acts of the State House of Assembly and the people in referendum but also the cooperation of both houses of the National Assembly for it to be effective, is within the realm of impossibility.

The 1999 Constitution provide for seven hundred and sixty eight local government areas in the thirty six States of the Federation, this is in addition to the six area Councils in the Federal Capital Territory; and these are the only constitutionally recognized Local Governments that are entitled to grant from the Federation Account.[6] However, the Constitution gave room for a State to create more Local Government Areas within its territorial jurisdiction, provided it follows the relevant provisions of the Constitution under section 8 thereof.

Section 8(3) of the Constitution provides:

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 –

(a) A request supported by at least two-thirds majority of members (representing the area demanding the creation of the new local government area) in each of the following, namely-
   (I) The House of Assembly in respect of the area, and
   (II) The Local Government councils in respect of the area, is received by the House of Assembly;
(b) A proposal for the creation of the local government area is thereafter approved in a referendum by at least two-thirds majority of the people of

[5] AG Eze & TC Eze, Creation of States and Local Governments under the 1999 Constitution: A Critical Appraisal, *ABU Journal of Public and International Law*, (vol 1/1, Department of Public Law, Ahmadu Bello University, 2007), 91.
[6] Oyelowo Oyewo, *op. cit.*, 113.

the local government area where the demand for the proposed local government area originated;

(c) The result of the referendum is then approved by a simple majority of the members in each local government council in a majority of all the local government councils in the State; and

(d) The result of the referendum is approved by a resolution passed by two-thirds majority of members of the House of Assembly.

A casual reading of the above provision may lead to the erroneous belief that creation of new local government areas is not as difficult as the constitutional requirements with regards to the creation of new State.[7] However, a considered reading of the provisions will lead to the inevitable conclusion that creation of new local government borders on the realms of impossibility. Additionally, the State House of Assembly must also conform with the provision of section 7(2) of the Constitution which provides that:

(2) the person authorised by law to prescribe the area over which a Local Government Council may exercise authority shall:

(a) define such area as clearly as practicable;

(b) ensure to the extent to which it may be reasonably justifiable, that in defining such area regard is paid to -:

(i) the common interest of the community in the area,

(ii) traditional association of the community, and

(iii) administrative convenience

The procedure for creation of Local Government Areas under the 1999 Constitution has received detailed consideration by the Nigerian Courts. This is because there has been various attempts by State Governments to create more Local Government Areas in their States presumably pursuant to the powers conferred by *section 8(3) of the Constitution*. However, no single attempt to create Local Government Areas by any State has succeeded despite the provisions of section 8(3) of the Constitution. This may not be unconnected with the power given to the National Assembly under section 8(5) of the Constitution in the exercise for the creation of new Local Government Areas.[8] It has been opined that a careful examination of the constitutional provisions give credence to the view that the creation of any new local government, will amount to an

[7] Under section 8(1), Constitution of the Federal Republic of Nigeria, 1999.

[8] Oyelowo Oyewo, *op. cit.*, 100.

amendment of the provisions of *s. 3(6)*, in relation to the number of local government areas, and *Part 1, First Schedule to the Constitution*, in relation to the areas that are recognized local government areas. Thus it has been opined that the amendment of the Constitution is necessary before new local government can be created.[9] This paper however have a different view, that is to say it doesn't envisages a true alteration of the Constitution. The return demanded to be made under section 8(6) and the consequential listing of the newly created local government areas by the National Assembly pursuant to *section 8(5) of the Constitution* does not amount to the alteration of the Constitution as envisage by *section 8 and section 9 of the Constitution*. As such a simple majority of the members of the National Assembly at the two houses of Senate and House of Representatives are capable of making the consequential provisions in *section 3 and Part 1 of the Constitution*.

In *Attorney General, Lagos State v Attorney General, Federation & Ors*,[10] by a letter dated 8th April, 2004, the President of the Federal Republic of Nigeria wrote to the Hon. Minister of Finance in respect of Local Government Elections and allocation of funds from the Federation Account to Local Government Areas. In his letter, the President directed the Hon. Minister thus:

> As the National Assembly is yet to make necessary consequential provisions in respect of any of the newly created Local Government Areas in the country, conducting election into any of them from the Federation Account would clearly be a violation of the Constitution. Consequently, no allocation from the Federation Account should henceforth be released to the Local Government Councils of the above mentioned States and any of the States that may fall into the category until they revert to their constituent Local Government Areas specified in part I of the First Schedule to the 1999 Constitution.

The Minister complied with the President's instructions. The Plaintiff (Lagos State) challenged the President's instruction by filing an Originating Summons wherein he sought declaratory and injunctive reliefs against the Defendant with respect to the suspension and withholding of statutory allocation due to and payable to Lagos State Government pursuant to *section 162(5) of the 1999 Constitution*. The Defendant filed a Counter-Claim and sought declarations in

[9] AM Olong, *Administrative Law in Nigeria*, (Malthouse Press Limited, 2009), 129.
[10] (2005) All FWLR (pt 244) 805.

respect of the new Local Government Areas created by the Plaintiff. The Defendants counter-claimed that the new Local Government Areas were created in contravention of the provisions of the 1999 Constitution and therefore illegal, unconstitutional, null and void.

The Supreme Court held inter alia, that the Plaintiff has the power under the Constitution to enact Law No. 5 of 2002 and the 2004 Law but the new Local Government Areas so created cannot take effect or come into operation until the National Assembly accordingly amends Section 3(6) and Part I of the First Schedule to the Constitution. Therefore the declaration sought can only be granted in part. That is to the extent that the new Local Government Areas cannot take effect until the National Assembly passes the consequential Act under *Section 8 subsection (5) of the Constitution.*

It is respectfully submitted that the decision of the apex court cannot be faulted on the requirement of the National Assembly to make the consequential listing in the relevant part of the Constitution to make the act of creating new local government areas complete. Respectfully however, the Supreme Court went too far by giving the National Assembly a blanket cheque on when to perform the duty of making the consequential listing. This in our view is highly prejudicial to the powers of the State House of Assembly in *section 7 of the Constitution*, which inter alia, granted power to the State House of Assembly to enact a Law that established Local Government Councils and define their structure, composition, functions and finance.

1.3 Election into Local Government Councils

Democracy can only have full meaning if, within the framework of general rules enacted by the central (Federal and State) government the affairs of the local communities are managed, not by the central authority itself (elected though it be), but by one based in the locality, freely elected by the local people and conducted by such locally elected functionaries independent of control by the central government. Participation must be carried to the grassroots, since only at that level can people's civic zeal be more effectively stimulated, their interest engaged, their political education made more practical and functional, and a greater sense of involvement and political responsibility created.[11] In the evolution of local government, participatory democracy is a major aim of local government system, as it made the people stakeholders in their local affairs.

[11] BO Nwabuezc, *op. cit.*, 243.

The provision of *section 7(1) of the Constitution* provides a clear precedent of the needed protection of local government system in Nigeria, which it secures by explicit provision guaranteeing the system of local government by democratically elected local government and directing the State Government to ensure its existence under a law which provides for its establishment, structure, composition, finance and functions. The purpose and effect of this guarantee is to restrict the State Government's power over Local Government by imposing a mandatory directive on how the power is to be exercised. With the restriction implied in the guarantee and mandatory directive, a State Government cannot, as hitherto, conduct Local Government as it pleases; it is bound to conduct it through local government councils democratically elected under a law enacted by the State House of Assembly.[12] In *Gov, Ekiti State v Olubunmo*,[13] the Supreme Court held that " it is obvious from the Constitution that *section 7(1)* thereof guarantees democratically elected Local Government Councils throughout Nigeria by establishing their existence. To the contrary *section 23(b), Local Government Administration (Amendment) Law*[14] provides for an arbitrary removal/dissolution of the Elected Councils by the appellants and replacing them with Caretaker Chairmen".[15] The section was therefore declared null and void for being inconsistent with constitutional provision on local government.

The Nigerian Constitution, in the Concurrent Legislative List, vested the State House of Assembly with powers over Local Government Councils election. The Second Schedule to the Constitution provides that "Nothing in paragraph 11 thereof shall preclude a House of Assembly from making laws with respect to election to a local government council in addition to but not inconsistent with any law made by the National Assembly.[16] This provision enables the State Governments to set up an Independent Electoral Commission to conduct election and among others provides for the procedure of challenging the outcome of the election before a judicial tribunal.[17] However it cannot make the decision of such tribunals to be final as this will offend the Constitution which makes the decision of trial courts appealable.

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[12] Ibid, 244-245.
[13] (2017) 3 NWLR (pt 1551) 1.
[14] Of Ekiti State, 2001.
[15] Per Ogunbiyi JSC at 48, paras C-E.
[16] Paragraph 12 of Part II, Second Schedule to the Constitution.
[17] AS Ishola, Finality Jurisdiction of the High Court in Local Government Election Petitions in Kwara State of Nigeria: Constitutional Challenges, *The Nigerian Law Journal*, (vol 17/2, NALT, 2014), 172.

The power of a State Government over local government elections is restricted in three respects.[18] First, the regulation of registration of voters and the procedure relating to local government elections is made concurrent to the State House of Assembly and the National Assembly, which means that in the event of conflict, the National Assembly's enactment prevails.[19] Secondly, a State electoral commission is also established in the Constitution, and among others, it is given a mandate to advice the Independent National Electoral Commission on the compilation of the register of voters in so far as it is applicable to local government elections in the State.[20] And Finally, the third restriction on the power of a State Government over Local Government elections relates to the franchise for such elections and the qualifications and disqualifications for candidates. The State Government is not at liberty to make the franchise and the qualifications and disqualifications for candidates more restrictive than are prescribed by the Constitution.[21] These are important restrictions, and one of the advantage of a written constitution is to serve as restriction on the exercise of governmental powers. The State House of Assembly in exercising the powers conferred on it by the Constitution, is not at liberty to circumvent these constitutional restrictions.

It has been argued that by virtue of the provision of *section 7 of the Constitution*, not even for one day should anybody other than elected local government council or councillor should preside over the affairs of the local government. It means therefore that before the term of the serving Council men is over, election should have been held and on the terminal date of their mandate, they hand over to another set of elected functionaries of local government. And on, and on and on, no gap is envisaged whatsoever by the Constitution.[22] It has however counter argued that the constitutional provision, guaranteeing local government by way of democratically elected councils, cannot reasonably be given such inflexible meaning or application.[23] The ideal situation in the spirit of the Constitution, therefore, is for the State House of Assembly to enact a Law that will provide for the conduct of Local Government Council Election during the lifespan of an

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[18] BO Nwabueze, "The Position of Local Government under the 1979 and 1999 Constitutions", in Jide Ayeni *(ed), Leading Issues in Local Government Reforms in Nigeria,* (SSC Publishers, 2006), 21.
[19] See item F, Concurrent Legislative List, *Constitution of the Federal Republic of Nigeria, 1999.*
[20] See paragraph 4(b) of the Third Schedule to the *Constitution of the Federal Republic of Nigeria, 1999.*
[21] BO Nwabueze (2006), *op. cit.*, 23.
[22] Jide Ayeni, *op. cit.*, 88.
[23] BO Nwabueze, *Nigeria's Presidential Constitution: The Second Experiment in Constitutional Democracy,* (Longman Group Limited, 1985), 268.

outgoing Council and leaving room for transitional period between the incoming and the outgoing.

The concept of local government administration therefore, is one of professional management of local affairs for the benefit of all the people. It is legitimized by the popular participation of the people through their elected councillors. In practice however, state governments conduct elections only when it suits their political machinations in clear contravention of the Constitution, as in some States throughout the four-year term of the Governors there were no elections. This is because the powers to fix the time for the conduct of the elections into local government councils and the tenure of the elected officials are vested in the State Houses of Assembly, and no time frame within which the election must be conducted is provided for in the Constitution.

Note that the powers the National Assembly has over local government elections are narrow and restricted being limited by the Constitution to the power granted to the Independent National Electoral Commission for the compilation of Voters Register and the regulation of the procedure for the conduct of the election which was made concurrent with the State. In *Attorney General, Federation v Attorney General, Abia State & 35 Ors,*[24] the Supreme Court held that the National Assembly's powers with respect to Local Government Councils elections in the States are limited to the Registration of Voters and the procedure regulating elections to a Local Government Council. The National Assembly has no power to make any law with respect to the qualification or disqualification of candy for elections to a Local Government Council.[25] These and other powers, surrounding the conduct of election into the Local Government Councils are the province of the State House of Assembly to exercised.

Despite the clear mandatory constitutional provisions most States in Nigeria refuses and neglect to conduct a democratic election into their Local Government Councils. Where it was held, it is mostly done to arrive at a predetermined result by ensuring the party controlling the State virtually won all the seat for Chairmen and Councillors with respect to the Local Government Councils of the State. The State House of Assembly is deemed unwilling to check the activities of the State Governors of capricious conduct of Local Government Councils outside the constitutionally prescribe form.

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[24] (2002) 5 MJSC 1.
[25] Ibid, 27.

1.4 Dissolution of Local Government Councils

In Nigerian constitutional arrangement, it must be made clear that the local government system cannot be abolished but an elected council can be dissolved since the continued existence of local government councils as democratic structures of government is guaranteed by the Constitution under section 7(1). It seems therefore, that the State Government may not appoint local government councils even if it may give itself the power to dissolve them under a state Law.[26] Local government councils must be democratically constituted and so the practice of appointing caretaker committees, management committees or Sole Administrators for local government councils may well be unconstitutional.[27] This is so even if the Law made by the State House of Assembly granted such permission to the Executive Governor, as doing so will be in violation of the guarantee under section 7 of the Constitution.

Though the respective state governments have control over local government councils this exercise of control over them would not justify the dictatorial powers of dissolving or inquiring into the activities of an elected local government council.[28] Throughout the history of Local Governments there were many cases of elected Local Government Councils being capriciously dissolved and replaced by appointed agents of the State Government, for instance the so-called caretaker committees, interim or management boards or sole administrators.[29] In *Dogari v Attorney-General, Taraba State*,[30] the Plaintiffs were elected as Chairmen and Councillor of the Karim Lamido Local Government Council in Taraba State for a term of 3 years. Two years into the tenure, the 2nd Defendant dissolved the Council on grounds of gross misconduct based on the recommendation of the 3rd Respondent and backed by the amendment made to the Local Government Law, No. 2 of 2000, which empowered the Governor to dissolve the Council on grounds of misconduct. On appeal, the Court of Appeal held that " Although it is within the legislative power of a State House of Assembly to make a law to regulate a local government council in the State plagued with crisis or make a law to prescribe for event upon which happening a local government council is dissolved or the Chairman or Vice Chairman of a local government council removed or vacates his office, any law made by the House of Assembly which provides for

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[26] SI Nchi *[et. al], Nigeria's State House of Assembly: Powers, Functions and Authority,* (Greenworld Publishing Company Limited, 2015), 72-73.

[27] Ibid.

[28] AM Olong, *op cit.*, 125.

[29] PA Oluyede, *Nigerian Administrative Law,* (University Press PLC, 1988), 121.

[30] (2011) All FWLR (603) 1786.

nomination of membership of a councillor appointment of an administrator or caretaker committee to replace a democratically elected council is inconsistent with the clear and unambiguous provisions of section 7 (1) of the Constitution of the Federal Republic of Nigeria, 1999, which guarantees democratically elected local government councils and is therefore unconstitutional to the extent of the inconsistency.

Even if a state government cannot be compelled to establish democratically elected local government councils, it can be restrained from using its own appointed agents to conduct local government functions.[31] In *Adeniji-Adele & Ors v Governor of Lagos State & Ors,*[32] the Governor of Lagos State pursuant to a power granted to him by the Lagos State Local Government Law dissolved the elected local government councils in the State and in their place appointed management committees. The action was declared void been a violation of the guarantee of local government by democratically elected councils. An order of permanent injunction was also issued against the state Governor restraining him from establishing communities of management and from appointing the members thereof.

In the Supreme Court case of *Gov, Ekiti State & Ors v Prince Sanmi Olubunmo & Ors,*[33] on the 25th October, 2010, the Respondents took out an originating summons against the appellants. The kernel of their case was that the provisions of the Local Government Administration Law, 1999 of Ekiti State as amended by section 23(B)(i) and (ii) of the Local Government Administration (Amendment) Law, 2001 of Ekiti State, which empowered the Governor of Ekiti State to dissolve democratically elected just local government councils and replace them with un-elected caretaker committees appointed solely by the Governor were in breach of section 7(1) of the Constitution of the Federal Republic of Nigeria, 1999 and therefore null, void and of no effect whatsoever. In its unanimous decision while dismissing the appeal, the Supreme Court held that section 7(1) of the Constitution guarantees the system of local government by democratically elected local government councils, and confers a toga of sacrosanctity on the elections of such officials whose electoral mandates derive from the will of the people freely exercised through the democratic process. The intendment of the Constitution is to vouchsafe the inviolability of the sacred mandate which the electorate, at that level, democratically donated to the elected

[31] BO Nwabueze (2006), *op. cit.*, 18.
[32] (1982) 3 NCLR 698.
[33] Supra.

officials. Simply put, therefore, the election of such officials into their offices and their tenure are clothed with constitutional force. And the elected officials tenure cannot be abridged without breaching the Constitution from which it derives its force. Such elected officials can only be removed from office if found to be in breach of the rules governing their office or for over-riding public interests in period of emergency.[34]

Following from the decision in *Ekiti v Olubunmo,* [35] except on the expiration of their statutory tenure, which has constitutional flavour, elected local government officials can only be dissolved or removed from office if (i) they are found to be in breach of the rules governing their office, or (ii) for over-riding public interest in a period of emergency. This should be the measure of determining whether the dissolution is valid or done to undermine the constitutional guarantee put in place to enhance the system of Local Government in Nigeria.

Notwithstanding the constitutional guarantee of the system of local government by democratically elected council, the protection did not go far enough as the duration of the tenure of the elected local government councils members has not been secured by the Constitution, leaving the tenure of such Councils to the discretion of the State House of Assembly, mostly on the direction of the State Governors. In *Adamawa State House of Assembly & 2 Ors v Chubado Batti Tijjani & 23 Ors,*[36] the Appellants by the Adamawa State Local Government System Establishment and Administration (Amendment) Law No. 6 of 2008 sought to reduce the tenure of local government councils in Adamawa State from two and half years to one year. Although the Law was declared null and void on the grounds that the House of Assembly did not follow the correct procedure in over-riding the veto of the State Governor as provided under section 100(5), the Court of Appeal re-affirm the power that the State House of Assembly has to fixed the tenure for local government councils members.

1.5 The State-Joint Local Government Account

Many observers of the local government scene in Nigeria have come to the conclusion that there exists lack of accountability at the grassroots level. They are of the view that local government functionaries see their Councils as goldmines where they help themselves with public funds rather than as

[34] At 33-34.
[35] supra
[36] (2012) 8 NWLR (pt 1303) 409.

instruments to better living conditions of their people.[37] It has been further opined that the funding to Local Government Councils in Nigeria may not be enough because of high level corruption in the Councils. [38] Thus while Local Government is in Nigeria entitled to statutory allocation from the Federation to carry out some functions, the same Constitution, under *section 162*, prescribe that such money must pass through a State Joint Local Government Account, and this has become a clog in the wheel of progress in terms of service delivery of the Local Government Councils.

In *Attorney General, Abia State & 2 Ors, v Attorney General, Federation & 33 Ors,*[39] the Supreme Court held that section 162(6) of the Constitution enjoins the State to maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State. The subsection is designed to enforce the provision of section 162(3). That apart the second leg of the subsection enjoins the State to also pay into the "State Joint Local Government Account", contribution for Local Government Councils from the Government of the State. [40]In other words, the State Joint Local Government Account will be made up of allocations from the Federation Account and from the Government of the State.

The State Joint Local Government Account is considered as a very important hindrance to the growth and development of Local Government Councils under the 1999 Constitution as the Constitution directs that each State is to maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocation for the Local Government Councils of the State from the Federation Account and from the Government of the State.[41] To operate this Joint Account, each State should establish a Management Committee whose composition should be determined by Laws passed by each State House of Assembly. Only few States had passed Laws establishing these management bodies and membership came from Federal Accountant General, the State Local Government Commissioner and Chairmen of all the Local Government Councils.

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[37] LS Wapmuk, "Local Government in Nigeria", in AT Gana & YBC Omelle [*eds*], *Democratic Rebirth in Nigeria,* (vol 1, African Centre for Democratic Governance, 2005), 254.

[38] FO Ibrahim, Discourse on Local Governments in Nigeria: Service Provision and Political Participation Approaches, *Journal of Local Government and Development Studies,* (vol 1/1, Department of Local Government and Development Studies, Ahmadu Bello University Zaria, 2014), 102.

[39] (2006) All FWLR (pt 338) 604.

[40] Ibid, 654.

[41] Section 162(6), Constitution of the Federal Republic of Nigeria, 1999.

Most other States relied on administrative circulars.[42] This is a glaring omission by the State House of Assembly in their failure to carry out important constitutional duty of ensuring that there is a Law enacted composing the membership of the Management Committee to operate the State Joint Local Government Account.

In practice however, all these provisions virtually strengthen State Governments over Local Government Councils both at an institutional and operational level. Such abuses came in form of varied or sometimes illegal deductions, and using the fund to sponsor party electioneering activities. For good number of States, it came to serve as a stabilization fund for the State Government. One consequence of the abuse was the starving of Local Government Councils of the required funds with which to operate their normal budgetary expenditure.[43] In essence, despite the enthronement of the State Joint Local Government Account (SJLGA) system, the problem of looting and siphoning of Local Government Councils' funds have not abetted but continued to flourish.[44] This resulted into inefficiency of the Councils due to shortage of funds.

1.6 The Making of Bye-Laws

The Constitution prescribes certain functions to be performed by a local government. However, it does not give to the local government any independent legislative powers except as may be provided for by a State House of Assembly.[45] This is because Local Government is not recognised as a third tier of government in Nigeria, it is more or less an appendage of the State. There is no constitutional provision on the legislative process of Local Government Councils under the 1999 Constitution. Local Government Legislative Councils operate under Local Government Laws enacted by each State of the Federation.[46] In *Akpan v Umah,*[47] the Court of Appeal held that the combined reading of *Sections 4(6), 4(7)(b) and (c) and 7(1)* leaves no one in doubt that the State House of Assembly is the only arm of government of a State which is vested

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[42] Bashir Jumare, "The Role of Local Government in National Development", (Paper presented at Induction Programme for Elected Local Government Councillors, 26th – 27th July, 2018).

[43] Adeyi Odoh, *Nigerian Local Government System: Decentralization and Democracy for Development or Decentralization, Democracy and Development,* (Inaugural Lecture, Ahmadu Bello University, 2014), 60-61.

[44] YA Zoaka & Sani Dauda, *Issues in Local Government Administration in Nigeria,* (Joyce Publishers, 2010), 94.

[45] Section 7(5), Constitution of the Federal Republic of Nigeria, 1999.

[46] KM Danladi, *Law Making, Challenges and Good Governance,* (Department of Public Law, Ahmadu Bello University, 2015), 183.

[47] (2002) FWLR (pt 110) 1820.

exclusively with legislative power to make law for the system of Local Government in States which provides for democratic elected Local Government guaranteed under section 7(1) of the Constitution.[48] Therefore Local Government Councils are devoid of sovereign authority. Their legislative function is to be exercise only as delegatees of the State House of Assembly.

As a general rule certain functions, powers, or obligations are not delegable. Powers that cannot be delegated include the legislative or law making powers. The legislative functions, cannot be delegated out, except the power to make subsidiary legislations under relevant primary or enabling law already made by the legislature.[49] The authority for permissibility of Local Government Councils to make bye-laws is found in *section 7 of the Constitution* which not only subjected the existence of Local Government Councils to a Law of the State House of Assembly establishing same, but equally obliges the State House of Assembly to grant the Local Government Councils functions inclusive of those set out in the Fourth Schedule.

One of the most important functions that Local Government Councillors are expected to perform is that of the making of bye-laws for their local areas. However law enactment might require technical knowledge and Councillors might need the technical know how before engaging in the act of legislation. Indeed, as representative of their people, their constituents is very fundamental to their function of legislation. Bye-laws generally are initiated by three distinct entities and as such are classified in accordance to the originator of the draft bill. Executive Bye-law is proposed by the Chairman of the Local Government and forwarded to the legislative arm for processing and when passed it becomes Executive Bye-law. Member Bye-law is a draft bill initiated by a member or group of members of the Council as legislative proposals of the member or member sponsoring motion. Private Bye-law is a Bye-law other than the one mentioned above which could be sponsored by pressure groups or individuals but introduced into the Council by a member or group of members.[50] The challenge facing Local Government Councils in the area of making of a bye-law is that even though presidential system is widely accepted in all the administration of Local Government Councils, key functions like annual budgetary estimates must still be submitted to the State House of Assembly for its approval. Additionally, the law making process in the Local Government

[48] At 1837.
[49] Ese Malemi, *The Nigerian Constitutional Law*, (3rd Edition, Princeton Publishing Company, 2017), 328.
[50] KM Danladi, *op. cit.*, 184.

Councils is made too cumbersome, making mockery of their not being composed of too many subsidiary law-makers.

In essence, a bye-law is a specie of delegated legislation. A delegated legislation is a secondary or subordinate legislation.[51] Bye-laws are legislations made by a non-sovereign body. The authority of Local Government to make a bye-law is not derived solely from the Constitution, rather it is essentially in accordance to the Law made by the State House of Assembly pursuant to the provisions of *section 7(1) of the Constitution.*[52] This clearly established the Local Government Councils as subordinate to the State House of Assembly and a bye-law made by a Local Government Council will be expected not to in anyway conflict with the parent law or any other enactment made by the State House of Assembly. This notwithstanding the absence of any provision to that effect in the Local Government Administration (Establishment) Laws of the various states. Being the parent law a Law of the State House of Assembly is superior to bye-law made by the Local Government Council.

1.7 Oversight Functions of the House of Assembly on Local Government Councils

The phrase "oversight functions" has not been legally defined. However, it is used to describe the duties of control, direction, inspection, supervision and/or surveillance which the legislature performs in respect of the execution of government business in order to promote good governance. [53] The legislative authority vested with the general powers over the Local Government Councils is the House of Assembly. It is the body then that can exercise oversight powers over the affairs of the Local Government Councils.

In addition to its general "oversight function" under *Section 128(1) of the Constitution,* the authority of the State House of Assembly to exercise power of oversight control on the Local Government Councils is rooted in *Section 7(1) and Section 4(7)(c) of the Constitution. Section 128(1) of the 1999 Constitution* empower the House of Assembly to perform an oversight function, by way of inquiry or investigation, on any matter with respect to which it has power to make laws or on any authority or person that has the responsibility of executing

[51] AW Bradley & KD Ewing, *Constitutional and Administrative Law,* (15th Edition, Pearson Education Limited, 2011), 627.
[52] PA Oluyede, *op. cit.,* 123.
[53] SO Tonwe, "Oversight Functions of the Legislature under the 1999 Constitution", in DC Maidoh [*ed*], *Judicial Administration and other Legal Issues in Nigeria,* (Malthouse Press Limited, 2010), 70.

laws enacted by it or upon whom it appropriated funds to. However, the powers conferred by the Constitution in respect of oversight functions of the Legislature are exercisable only for the purpose of enabling the Legislature to perform the following functions:

(a) To make laws with respect to any matter within its legislative competence and correct any defect in the existing Laws; and

(b) Expose corruption, inefficiency or waste in the administration of funds appropriated by it.[54]

By virtue of the above provisions and that of *section 7(1) of the Constitution* it is the State House of Assembly that has the power to exercise oversight functions on the affairs of Local Government Councils in Nigeria. This is because Local Government Councils are creation of State House of Assembly, and as the Councils generally derived their powers from the Law made by the State House of Assembly, the legislature then is not divested of power of oversight control over the Local Government Councils. In *Amakwenze v Amalinke,*[55] one of the issues for determination was whether the donor of power divests himself of the power when he donates to a delegate to act for him. The Supreme Court held that the general rule is that an authority which delegates its powers does not divest itself of the power delegated and therefore should undertake the responsibility to supervise the delegate in its use for the general good of society. However, with respect to the Local Government Councils, the exercise of this legislative power must not derogate from the guarantee of democratic system prescribed by section 7(1) of the Constitution.

There are three types of oversight functions. These are the power of the Legislature to conduct investigations, control and surveillance over the financial affairs of the executive, and control and supervision of government general business.[56] The exercise of all these powers has vested the State House of Assembly with tremendous amount of check and control over the activities of the Local Government Councils. Allegedly, the State House of Assembly is not welding the power for altruistic purposes but as extortionate mechanism on the Councils.

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[54] Section 128(2)(a)&(b) of the Constitution.
[55] (1985) 1 NWLR (pt 4) 771 SC.
[56] AM Olong, *op. cit.*, 131.

1.8 Conclusion

The constitutional provisions of Local Government in Nigeria seems to be inchoate, especially if measured in accordance to provisions made for the higher tiers of government. The Constitution only provided guidelines consisting of template upon which the Local Government system in Nigeria is to be carried out without the nitty gritty of how it is to be effectively achieved. Additionally, the Constitution left the vital issues of establishing, composing, giving structure, functions and finances of Local Government Councils majorly in the hands of the State House of Assembly.

It has been discovered that the Constitution in permitting the State Governments to create new Local Government Areas made the provisions so onerous bordering on the realm of impossibility. Secondly, the States are equally guilty of undermining the constitutional guarantee of a Local Government system by way of democratically elected councils and the State House of Assembly is not guided on the manner of fixing time within which the election into the Councils is to be conducted. Nor also was the yardsticks for dissolution of the said Councils given in the Constitution. Thirdly, the important issue of finance of the councils is subjected to the control of the State Governments by way of State Joint Local Government Account. In most instances the said Account is been used by the State Governments for functions outside those permitted by the Constitution and in the absence of State House of Assembly nominated Management Committee members. Finally Local Government Council been a derivative and not sovereign authority can only exercise subsidiary law making powers further subjecting it to the influence of the State House of Assembly in addition to the Assembly's oversight function on the Councils.

In order to make the system of local government administration in Nigeria more meaningful and responsive to the yearnings of the local populace, it is hereby suggested that the constitutional provisions relating to the local government councils in Nigeria should be made more simpler. Secondly, the State House of Assembly should be guided by way of constitutional provisions that will specify the time upon which local government election is to be conducted and the duration of the elected council members as was done for the higher tier governments. This will save the Councils from lack of uniformity of tenure and unwholesome tinkering by the State Governments either through the instrument of the State House of Assembly or in the absence of any legislation. Finally, for a system of Local Government to be meaningful and able to discharge the

functions given to the Councils by the Constitution, the provision relating to the State Joint Local Government Account should be altered to enable the Councils to enjoy financial autonomy, as the responsibility given to the State House of Assembly in the area is not utilise by it by their abdication of responsibility leaving it as unregulated pool for the exploitation of the State Governors