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## Legality of Caretaker Committees to Manage Local Government Councils in Nigeria

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### **Abstract:**

*The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides in its section 7(1) for democratically elected local government councils in Nigeria. However, many states in the country manage their local governments without such democratically elected councils but with caretaker committees appointed by the state governors. This paper examines the legality of such caretaker committees appointed to manage local governments in the face of the constitutional provisions on the matter and the further provision of section 1(2) of the Constitution to the effect that the country nor any part of it shall not be governed or its government taken control of by any person or group of persons except in accordance with the provisions of the Constitution. The methodology adopted is a review of the Constitution and state laws on the issues, as well as judicial decisions and opinion of writers. The research reveals that this method of managing local government is unconstitutional and has resulted in inefficiency as well as other shortcomings in the management of local governments in Nigeria. The paper recommends a strict application of the provisions of the Constitution and a review of some problematic provisions of the Constitution on local government to prevent ambiguity and undue hardship on the implementation of the laws on local government in Nigeria.*

**Keywords:** caretaker, committee, local government, councils, democratically elected

### **1. Introduction**

Local government is the tier of government closest to the people, which is vested with certain powers to exercise control over the affairs of the people in its realm. It is expected to play the role of promoting the democratic ideals of a society, coordinating development program at the local level as well as serve as the basis of socio-economic development in the locality. The necessity for the creation of local government anywhere in the world stems from the need to facilitate development at the grassroots, and its importance is a function of its ability to generate sense of belongingness, safety and satisfaction among its populace. In Nigeria's socio-political context with multiplicity of culture, diversity of languages and differentiated need and means, the importance of such an organization in fostering the needed national consciousness unity and relative uniformity as well as presentation of peculiar diversities cannot be over emphasized (Arowolo, 2010).

The earliest form of local governments' administration in Nigeria is said to have existed in forms of clan and village meeting (Aghayere, 1997). However, the history of modern local government system in Nigeria dates back to the British colonial rule. The first stage was the establishment of native authorities from the 1830s through whom the colonial masters carried out their administration under their indirect rule system of governance. Between 1950 -1955 the first largely elected local government council based on the British Whitehall model was introduced in Lagos and former Eastern and Western Regions of Nigeria. From the end of the British colonial rule in 1960 there was decline in the prestige and responsibilities of local authorities. From that time till 1976, the local government system in Nigeria was faced with myriads of problems ranging from inefficiency to mismanagement by state governments, which led to agitations for a reform of the system of local government system in Nigeria to enable it perform the functions that such a system is expected to perform in governance.

In 1976 the federal government embarked on extensive reforms of local government. The 1976 reforms among other things developed a uniform system of local government for the whole country, conceptualized local government as the third tier of government. It further provided that 75 percent of the members of each local government council shall be elected through the secret ballot on a non party basis, under the direct and indirect systems of election. The remaining 25 percent are to be nominated by the state government. The subsequent 1979 Constitution reaffirmed the development function advocated by the 1976 reforms in its section 7(3). In addition, the 1979 Constitution provided in its section 7(1) for a democratically elected local government councils for the country. The extant,

1999 Constitution of the Federal Republic of Nigeria (as amended) following the 1979 Constitution also provides for a democratically elected local government council. Section 7(1) of the 1999 Constitution specifically provides thus:

The system of local government by democratically elected local government council 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, fiancé and functions of such councils.

It is however note worthy that the provision of this section on democratically elected local government council has been promoted more in breach by the state governments who have since the promulgation of the 1979 Constitution and subsequently the 1999 Constitution have managed their local governments with appointed personnel either in the name of sole administrators or caretaker committee. This position is attributed to among other things, the many ambiguous, problematic and confusing provisions of the 1979 and subsequently the 1999 Constitution on Local Government in Nigeria.

## 2. The Concept of Local Government and its Role in Governance

Local government, which may be simply recognized as that level of government at the local level, closest to the people has been variously defined by different scholars in different ways. Apparently due to the varied perspectives on the actual roles and purposes of local government which differ from one environment to the other, scholars are not agreed on a specific definition of the concept of local government. However, from whatever point the concept is defined it is to be noted that the concept of local government involves a philosophical commitment to democratize participation in the governing process at the grassroots level. This implies legal and administrative decentralization of authority, power and personnel by a higher level of government to community with a will of its own, performing specific functions as within the wider national framework (Arowolo, 2010). Various scholars have defined local government in many ways thus:- Local government is the government by the popularly elected bodies charged with administrative and executive duties in matters concerning the inhabitants of a partial or district or place (Appadorai, 1975). It is the lowest unit of administration to whose laws and regulations the communities who live in a defined geographical area and with common social and political ties are subject. The implication of this definition is that the territorial jurisdiction of the local government has to be clearly determined and defined to enable the residents of the local government be aware of their civic and financial claims for the provision of services and for protection against health and other hazards (Orewa and Adewunmi, 1992). The United Nations Office for Public Administration defines local government as: A political subdivision of a nation or (in a federal system) state, which is constituted by the law and has substantial control of local affairs including the powers to impose or to exact labor for prescribed purposes. The governing body of such entity is elected or otherwise selected (Ola, 1984).

It is defined by the 1976 Local Government reform Handbook as:

- Government at the local level exercised through representative councils established by law to exercise specific powers within defined area. These powers should give the council substantial control over local affairs as well as the staff and institutional and financial powers to initiate and direct the provision of services and to determine and implement projects so as to complement the activities of the State and Federal Government in their areas, and to ensure through devolution of these functions to these councils and through the active participation of the people and their traditional institutions, the local initiative and response to local needs and conditions are maximized. (1976)

Local government is thus the tier of government closest to the people, and vested with certain powers to exercise control over the affairs of the people in its domain. It serves as the foundation on which the higher levels of government such as the state and federal governments touch the lives of the people most intimately. It is also expected to play the role of promoting the democratic ideas of a society and coordinating development program at the local level. It is also expected to serve as the basis of socio-economic development in the locality.

From the various definitions given, four key characteristics of local government can be seen. First, local government officials are elected. In all its ramifications under normal circumstances, regular elections at specified periods of time is a feature of local government which is recognized by the Constitution (section 7(1) 1999 Constitution). Secondly, the local government unit must have a legal personality distinct from both the state and federal governments. Thirdly, the local government must have specified powers to perform a range of functions and fourthly, the local government must enjoy substantial autonomy. This means that the local government council is elected at the local level and operates independently of the state and federal government. This must be so because under the supreme law of the country which established it, local government is no longer an appendage or field office of the state government. The characteristics of local government autonomy include amongst other things, the ability to make its own laws, rules and regulations, formulate, execute and evaluate its own plans and the right to recruit, promote, develop and discipline its own staff (Adeyomo, 2005).

Over the years, there has not been a general consensus as to the precise role local government should play. In Nigeria however the reasons for the evolution of local government range from political, social and economic, and they are expected to play certain roles which include:

### 2.1. To Bring Governance Closer to the People

Local government functions to bring democracy to the local citizens as well as to educate and socialize them politically; participation of the citizens in governance is one of the underlying percepts of democracy. Due to the vast nature of the country (Nigeria), the presence of governments whether at the federal or state levels was not well felt by the people, and this led to neglect and distrust of

government by the people. In a bid to bring the activities of government closer to the people, local governments were created to serve as conduits through which government's policies are communicated to the people (Agbakoba and Ogbonna, 2004).

### 2.2. For Administrative Convenience

Local government serves as a channel through which policies and programs from the state and federal government are communicated and implemented. This is because there are many functions that will be cumbersome for the state and federal governments to perform because of the distance separating them and the people e.g.:

- i. Collection of rates, radio and television licenses;
- ii. Registration of births, deaths and marriages registry etc.

The local government was also created to serve as the representative of both the federal and state governments amongst the local people. It is a channel through which policies are communicated and implemented (ibid).

### 2.3. To Ensure That Resources Are Effectively Mobilized

This is to arouse in the citizens the zeal or willingness to contribute financially, materially and morally to the management of local affairs. Local governments are created to bring about meaningful development in the rural areas through the effective mobilization of resources. Local government use the funds made available to it by both federal and state governments and their internally generated revenue to improve on the lives of the people within their areas of operations (Aghayere, 1997).

### 2.4. To Preserve Heritage and Common Interest of the People

In Nigeria today, there are over 364 ethnic groups with diverse cultures and tongues. These ethnic groups are further divided into communities. These communities form the constituents/areas of local governments in Nigeria. By carving out local governments from amongst people of the same community, government is preserving such long traditional associations and using same to foster the interest of the people concerned. The creation of local government is intended to bring people of common heritage or ancestry together as a political unit to further their interests and increase their participation in government business.

It should be noted that, the broad objective of establishing local government is placed on the service delivery function. When roads are bad, when there are no markets stalls, no health centers, when there is no water, no drugs in the local dispensaries and when refuse is littered all around the place etc, the ordinary citizen blames it on the local government. It follows, therefore, that local government administration is established to affect citizens through the service delivery function.

## 3. Formation of Caretaker Committee

In spite of the provision of section 7(1) of the 1979 Constitution on the democratically elected local government council, from 1979 to 1983, under the democratic regime of Alhaji Shehu Shagari, no elections were held into local government councils, rather state governors appointed sole administrators to manage local governments in their states. The system of sole administrators continued under the military regime of Mohammadu Buhari. The first local government election since the 1979 Constitution actually took place in December 1987.

In preparation for the Fourth Republic in 1999 local government elections were held on 5<sup>th</sup> December, 1998. The elected officers did not assume office until May 1999. In this instance one of the confusions created by the provisions of the 1999 Constitution on Local Government reared its head. While the Constitution provided for four-year tenure of office for the elected officers of both the federation and states, no tenure was provided for local government elected officers. The electoral law under which the local government officials were elected to office (the Basis Constitutional and Transitional Provisions Decree No. 36 of 1998) provided for three-year tenure. This meant that their tenure was to end in May 2002. The local government officers desiring to have their tenure extended by one year to bring it at par with the state and federal government officials found a ready support in the National Assembly, who by legislation – the Electoral Act, 2001 - extended the tenure of local government officials to four years. The state governments not satisfied with that provision among others, of the Electoral Act, 2001, through their respective Attorney-General instituted a joint action challenging the provisions of the Act which they felt, offended against the provisions of the Constitution of the Federal Republic of Nigeria, 1999 relating to the powers of the states in the case of *Attorney-General of Abia State & 35 others v. Attorney General of the Federation* (2002). The Plaintiffs sought among other things a declaration that the National Assembly cannot validly increase or otherwise alter the tenure of office of elected officers or councilors of local government councils in Nigeria except in relation to the Capital Territory alone. On this claim, the court entered judgment for the Plaintiffs declaring that no law enacted by the National Assembly can validly increase or otherwise alter the tenure of office of elected officers. It stated thus:

- ...True enough, section 7(1) of the Constitution which empowers the State Government to provide for the establishment, structure, composition, finance and function of local government councils in the state is silent on the tenure of elective offices in these councils. By this silence, the matter becomes residual as it is not on the Exclusive Legislative List. By virtue of section 4 (7)(a), residual matters are for the state, not the federal to legislate upon. It follows that the tenure of the elective offices in local government council is a matter of the House of Assembly of a state and not the National Assembly, to legislate.

As elections were not conducted to usher in new local government council, at the expiration of the three years at the end of May 2002 the State Governments appointed caretaker committee for all the local government councils in their states to serve until another date of election was agreed upon.

Another confusion created by the provisions of the 1999 Constitution that has affected the execution of the provision of section 7(1) on democratically elected local government council and invariably the formation of caretaker committees is the provision vesting the power of compilation of a register of voters for election including local government elections exclusively in a federal agency, the Independence National Electoral Commission (INEC). Thus, while the State House of Assembly may, concurrently with the National Assembly legislate on the registration of voters, the compilation of the register of voters is vested exclusively on INEC. On the other hand, while the National Assembly and the State House of Assembly may legislate on the procedure for local government elections and on the registration of voters for that purpose, the elections are to be organized and conducted exclusively by the state government through the State Independent Electoral Commission (SIEC) (3<sup>rd</sup> schedule part 11 paragraph 4(a)). Given that the holding of an election is conditioned by the existence of a register of voters prepared and maintained by INEC in a form designed to facilitate its use for the purpose of local government elections, a State Independent Electoral Commission cannot therefore organize, undertake and conduct local government elections if, for any reason, there is no register of voters prepared and maintained by INEC for the purpose. This point had arisen in 1980 under the operation of the 1979 Constitution in the case of *Lawal v. Lagos State Electoral Commission* (1981). In that case, the electoral commission for Lagos state was organizing local government election to be held throughout the state in March 29, 1980. It had planned to use for the purpose the register of voters compiled by Federal Electoral Commission (FEDECO) in 1977/78 for presidential, gubernatorial and legislative elections in 1979. The register was based on constituencies for the legislative elections, which made it clearly unsuitable for use in local government elections based on wards. Besides, the law under which the register was prepared – the Electoral Act 1977 explicitly excepted local government elections from its application. The court, inter alia, gave an order of perpetual injunction restraining the State Electoral Commission from holding, organizing or conducting local government elections in the State unless and until a register of voters for the purpose of such elections is compiled by FEDECO or until a new register of voters for the purpose of election to the State House of Assembly is prepared, and adopted to make it suitable for use in the local government elections.

This same scene was replicated in 2002. In anticipation of the expiration of the tenure of office of the elected local government officials in May 29 2002, the State Independent Electoral Commissions of the various states had fixed May 2002 for elections into the local government councils. However, INEC who had the responsibility of updating the voters register and making same available to the SIECs failed to produce and make the voters register available. No local government elections could therefore be held. As a result, the governors had to resort to the appointment of caretaker committees to serve for 3 months, while a new date for election was chosen for August 10, 2002. Due to various reasons the election did not take place on that date, and never did take place for many more years after that, giving way for continuous constitutional breach by the use of caretaker committees and other appointed officers to manage local government councils in states in Nigeria.

#### 4. State Laws on Caretaker Committees

By virtue, section 7(1) of the 1999 Constitution the government of every state is given power subject to section 8 of the Constitution to ensure the existence of local government councils under a law which provides for the establishment, structure, composition, finance and functions of such councils.

Under the Nigerian federalism, in line with requirements for proper functioning of federalism that there should exist a technique of division of powers among the different tiers of government (Obidimma and Obidimma), the 1999 Constitution specifically assigns to the states specific area of competence. On the legislative powers of the States House of Assembly, the Constitution provides in section 4(7) that they shall have power to make laws for the peace, order and good government of the state or any part thereof with the respect to the following matters that is to say –

- a) any matter not included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution;
- b) any matter included in the Concurrent Legislative List set out in the first column of Part 11 of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
- c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

The power granted to the State House of Assembly by the Constitution certainly does not include the power to make laws to truncate a democratically elected local government council, nor can they by any law appoint a caretaker committee or transition committee to take over the function of a democratically elected local government council, as this would be a derogation from the provisions of section 7(1), and 1(2) of the 1999 Constitution, and so such laws would be null and void to the extent of their inconsistency. Thus the court in *Akpan v. Umah* (2002) stated inter alia that

- ... any law made by the House of Assembly which provides for nomination of membership of a council or 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 1999 Constitution which guarantees democratically elected Local Government Councils and is therefore unconstitutional to the extent of the inconsistency

Also in *Attorney-General of Plateau State & Ors. v. Hon. Chief Anthony Goyol & Ors.* (2007), the court was of the view that although the House of Assembly has power to make laws, such laws must be in accordance with the provisions of the Constitution. The House of Assembly has no power to make any law giving the Governor power to truncate a democratically elected Local Government Council.

The idea of caretaker committee or any other body, which is not a democratically elected local government council is unconstitutional and has been severally condemned. Accordingly, the Minister of Justice and Attorney General of the Federation (AGF), Mohammed Bello Adoke (SAN) during his screening as a ministerial nominee by the senate denounced the system as being against the tenets and

letters of the 1999 Constitution, illegal and unknown to law. The practice had also been condemned in the cases of *Akpan v. Umah* (2002), *Akanv. Attorney General, Cross River State* (1982) and *Akinpelu v. Attorney General, Oyo State* (1982). In spite of this obvious illegality, the system of caretaker committees running the affairs of local government in Nigeria has been the common practice in Nigeria. So that from the time of the promulgation of the 1999 Constitution to 2011 there was hardly any state that had not at one point or the other appointed caretaker committees to run the affair of their local governments. In Anambra State for instance apart from the local government election conducted in 1998 the 21 local government areas of the state did not experience any democratically elected council till 2014, when the next local government election was conducted. Therefore, between 2002 (when the tenure of the elected local government council ended) and 2014 the local government areas in Anambra State were managed by one form of appointed representatives of the state governor or the other and never by an elected council.

At some point (as reported by the National Mirror Newspaper of Tuesday, 30 August 2011) in 2011 up to 23 states across the six geopolitical zones in Nigeria handled the administration of their local government areas with caretaker or transition committees. These states include Oyo, Niger, Benue, Delta, Kebbi, Zamfara, Kastina etc. In most of the states the caretaker committees came into existence through the local government laws of the states as the State Houses of Assembly enacted laws for the administration of local government and inserted the constitution of caretaker committees. In Delta State for example the State House of Assembly enacted a law titled Local Government Transition Law 2011. In Ebonyi States in 2015 the State House of Assembly had to amend the Laws of Local Government to enable the governor appoint a caretaker committee. In the same vein the existing Local Government Law in Enugu State also had to be amended for the same purpose.

Such laws are inconsistent with the provisions of section 7 (1) of the 1999 Constitution and by section 1(3) of the same Constitution are void to the extent that they are inconsistent with the provisions of the Constitution.

It is to be noted that in spite of the hues and cries and obvious illegality of caretaker committees as pronounced by various judicial decisions, the practice is still on. The various governors, who indulge in this, give various reasons such as lack of adequate funds to carry out elections, avoiding vacuum before the conduct of the next Local Government elections etc. to justify their actions. However, no amount of excuse proffered can cure the illegality of an illegal act. As it is the intent of the Constitution that local governments in the country should be managed by democratically elected local government council, so does it also provide for democratically elected leadership in both the state and federal government. If this intent can be achieved at both the state and federal levels, then it should also be achieved at the local government level. After all, no state in Nigeria or even the federation has ever under any democratic regime been governed even for one day by a transition government or caretaker committee pending the conduct of election to elect the governor or president or even the legislative arm. If elections at these levels can be conducted at proper times to avoid any vacuum, we should also aim at achieving that at the local government level.

Today in Nigeria some states, such as Oyo, Enugu and Ebonyi States still operate their local governments with caretaker committees.

##### **5. Reasons for Resort to Caretaker Committees**

The practice of using caretaker committees to manage local government councils in Nigeria started since 1960 when the governance of the country came into the total control of Nigerians. As long as local government has had elected members in its management team, the state governors have found one reason or another to remove such elected officials and replaced them with appointed officials to suit their whims and caprices in the management of the affairs of local government. Under the system of local government that operated after independence in 1960 different states operated different systems of local government. The system was characterized by a multi-tiered local government structure particularly in the Eastern and Western regions, where both elected and traditional elements were accommodated in the local government councils. (Agaju, 2004). However, it was more common during this period to find local government councils run by appointed agents of the state government.

The issue of local government governance by elected council did not fare any better with the military. The first military coup took place in Nigeria in 1966 and as expected all local government councils were abolished and sole administrators were appointed (Igbuzor, 2009). In 1976 the military government initiated local government reforms, which introduced a uniform system of local government administration throughout the country. It recognized local government as a third tier of government and granted financial and functional autonomy to local government administration in Nigeria. The reform was a major departure from the precious practice of local government administration in Nigeria and formed the foundation of the present-day local government system in Nigeria in terms of structure, composition, functions, finance and democratic existence (Odalonu, 2015). Though a major reform of local government system was carried out under the military regime in 1976 it was carried out in a most undemocratic manner as is the characteristic of the military. For instance, the guidelines of the reform provided that 25 percent of members of the council are to be nominated by the state military Governor. Also the election of the chairman of the council is subject to the ratification of the state governor. This according to Igbuzor (2009) laid the basis of the interference in the conduct of the affairs of local government by the military and civilian state Governors till date. The main tenets of the 1976 local government reform were incorporated in the 1979 Constitution. Subsequently the reform was also modified and enshrined in the 1999 Constitution of Nigeria. Both Constitutions specifically provide for a democratically elected local government council under section 7. However, in spite of the specific provision of the Constitution on this issue the state governors continue to run the affairs of local governments in their states with appointed local government usually referred to as local government caretaker committee.

Thus local governments for a long time have been under the state which exercised control over them that left them impotent and highly dependent on the states. There have been lots of cases of elected councils being capriciously dissolved and replaced by appointed agents of the state government, the so called caretaker committee or management boards or sole administrators. At these

different stages of evolution of local government in Nigeria the state governors have proffered varied reasons for the use of appointed agents as provided by various laws dealing with local government. However, the major reason for the successful creation and functioning of caretaker committees especially under the present dispensation is as a result of the ambiguous, problematic and confusing provisions of the 1999 Constitution on local government, some of which are discussed as follows:

### 5.1. *Enormous Powers of the State Governments over Local Governments*

By the provisions of section 7 and 8 of the 1999 Constitution local government is recognized as a third tier of government but the same Constitutions still gives the state the power to lord it over the local government. By the provision of section 7(1) the existence and continuous sustenance of local government is the primary responsibility of the state government in which such local government is situate. The Supreme Court had occasion to pronounce on this in the case of *Attorney-General of Abia State and 35 others v. Attorney-General of the Federation* (2002). There the apex court reiterated that routine matters of fixing date for local government elections, delineation of wards etc are exclusively within the constitutional jurisdiction of the state governments through their agencies like the state Independent Electoral Commission.

The conduct of local government elections is the function of the state government through the SIECs. It is noted that since SIEC took over the conduct of local government in Nigeria it has been abused by the state governments and used against the opposition, simply because it is under the control of state governors. For instance, since the creation of SIEC no state in Nigeria has had up to two local government chairmen voted from opposition parties. SIEC always declared the ruling political parties in the states as winners of all the contested seats in local government elections (Obidimma, 2015). The Constitution further gives room for possible abuse of power by the state government by giving the power for the compilation and updating of the voters, register, to be used by the state to conduct local government elections, to the federal government through its agency the INEC. This arrangement that creates a situation where one level of government will depend on another level to carry out its basic function certainly allows grounds for failure of the level to carry out that particular function on the excuse of failure of the other level to do that required for it to perform that function. The arrangement thus allows for inefficiency, and the states have constantly claimed that their failure to conduct local government was as result of the failure of INEC to update the voters list for that purpose.

Furthermore, the failure of the Constitution to provide for a fixed tenure of office for local government politically elected officers as it did for the federation and the states has allowed for more powers for the state government and also given room for possible abuse of the power. The state thus has the power to fix the tenure of office local government elected officers (*Attorney-General of Abia State & Others v. Attorney General of the Federation*, 2002), and many of them have done the fixing and changing of the said tenure to suit their whims and caprices in removing elected local government officers and appointing caretaker committees.

With the enormous powers of the state government to deal with local government and the other constitutional issues on local government many greedy state governors find excuses to use caretaker committees in managing local government councils in their states with reasons ranging from inability to conduct elections due to INEC's failure to provide voters list to inefficiency of the elected officials.

### 5.2. *State Joint Local Government Account*

Another aspect of the provisions of the Constitution that creates an enabling ground for the creation of caretaker committees is the issue of state joint local government account.

One of the sources of finance of local government is through a direct share of federally collected revenue (section 162 (2), 1999 Constitution). However, as provided by section 162 (3) of the 1999 Constitution, the amount standing to the credit of local government councils in the Federation Account shall be allocated to the states for the benefit of their local government councils in such a manner as may be prescribed by the National Assembly. Thus the share of revenue due to the local governments in each state is not paid directly to them, but through the state government. This may be read together with section 7 of the Constitution which empowers the state to make laws on local government finance. The payment is made to the state government as trustees to distribute it to its local governments in accordance with a formula to be prescribed by the State House of Assembly (Section 162(8)). The state is also to pay to local government's councils in the state certain proportion of the state revenue (Section 162(7)).

Under section 162(6) each state shall maintain a special account called "State Joint Local Government Account" (SJLGA) into which shall be paid all allocations to the local government councils of the state from the Federation Account and from the revenue of the government of the State.

This method of allocation of the amount from the Federation Account to the local government councils through the state governments as well as the maintenance of the State Joint Local Government Account raise some questions with regards to the issue of discuss. There is no doubt that between the Federation Account and the State Joint Local Government Account something can get deducted before each local government can get the final and eventual allocations to run its programs. To distribute the amount standing in the SJLGA to the local government councils in each State section 162(8) directs that the State House of Assembly shall make a law prescribing the manner of such division. Through these laws there have been various forms of deductions and diversions of funds intended for local governments (Okafor, 2010). It is to be noted that the state government is not intended to be a beneficiary of the SJLGA; rather it is a trustee of the account. It is to maintain the account for the benefit of the local governments by ensuring that the amount allocated for this third tier of government is equitably and fairly shared among the councils, adhering strictly to constitutionally stipulated criteria. However, reports from across the country indicate that most state governments use the SJLGA Laws contrary to this intention. In Borno State between March 2002 and March 2003 out of a total of N13.3 billion made available for

the councils in the state from the Federation Account the state government deducted almost half (amounting to about N6.8 billion) (Diakwa, 2004). In Rivers State a total of more than N31 billion was deducted from the revenues accruing to local governments that State between 2007 and 2013 (Agbani, 2014).

Most of these deductions are done under one form of cover or another in strong connivance with corrupt executives of some local government. It is argued that where elected local government officers are found uncooperative in allowing such deductions the state governments will find reasons to sack such officers and appoint caretaker committees comprising of members who are their cronies and will assist them in making all the deductions they want.

## 6. Conclusion

The creation of local governments in Nigeria like in other countries of the world stems from the need to facilitate development at the grassroots, and the ability arising from it to generate sense of belongingness, safety and satisfaction among the populace. What culminated into the present day local government in Nigeria started with the system adopted by the British colonial masters which they considered necessary in order to achieve effective governance; the indirect rule, which involved administering the local areas through the traditional rulers which continued up to the time of formation of the regions. During this time local government system was subsumed under the regions. Furthermore, the local government of this period was mismanaged by the regional governments and did not succeed in performing the role which local government are expected to perform. The 1976 reforms of local government in Nigeria went a long way to raise the standard of local government in Nigeria. With the reforms local government was for the first time given constitutional recognition under the 1979 Constitution which also consolidated the 1976 reforms. The subsequent 1999 Constitution replicated and retained most of the provisions of the 1979 Constitution on local government, making some improvements on the existing provisions.

Under the 1999 Constitution local government is a residual matter and thus a function of the state government. However, of utmost importance to the existence and conduct of the affairs of local government the Constitution in Section 7(1) provides that the affairs of local governments in Nigeria shall be managed by democratically elected local government councils. Thus though local government is a function of the state government the officers of local government are not to be appointed by the state government but shall be constituted through democratic election. The Constitution gave the power to conduct the local government election to the state government through the SIEC but gives the function of providing the voters list for the conduct of the said election to the Federal Government through the agency of INEC. The Constitution also provides for the finance of local government which is made up of the allocation from the Federation Account as well as from the revenue of the state government providing further that the money belonging to the local government shall be paid into the State Joint Local Government Account, which each state shall maintain, such that the state government holds the local government fund in trust for the local governments and shall disburse such money as the need arise.

Unfortunately, the provision of section 7(1) has been observed more in breach, for since the promulgation of the Constitution most of the states in Nigeria have had the affairs of their local governments managed through appointed officers usually referred to as caretaker committee. It is our argument that the state governments have succeeded in the use of caretaker committees to run the affairs of local government as a result of the ambiguous and problematic provisions of the Constitution on election of the members of the local government councils and the formation of the State Joint Local Government Account which serve as fertile ground on which the state governors stand to insist on the use of appointed officials - caretaker committee to manage the affairs of local government in Nigeria. Thus while concerted efforts have been made through local government reforms and giving it constitutional recognition in order ensure that local governments in Nigeria succeed in performing effectively the functions of that tier of government, certain ambiguous and problematic provisions of the Constitution have assisted the state governments to deny the local government the means of achieving its goals, by the use of caretaker committees who are loyalists and cronies of the state governors and whose roles span from assisting the state governors to divert funds meant for local government projects to other purposes, to helping them to secure political votes to enable them run for second tenure or ensure that candidates from their political parties remain governors in the state. As a result, the people at the grassroots are denied the opportunity to elect representatives who can be trusted to manage the affairs of local government. Furthermore, they lose the benefits derivable from an effective management of the local government.

In order to restore the local government system to the proper status that tier of government is expected to have in a country, particularly in a developing country like Nigeria, there is need to review the provisions of the 1999 Constitution with regards to local government.

It is our view that local government will fare better if it is given autonomy close to that given to the states and federal governments have. Moreover, if local government is said to be the third tier of government, it should indeed be made that third tier in reality.

A situation where the fund for which a level of government is to use to perform functions assigned to it is to be controlled by another level will certainly create confusion and abuse, especially in a country like Nigeria with high level of corruption. Therefore, the method of local government allocation from the federation account being sent to the state government for disbursement to the local governments in the state and the system of State Joint Local Government Account should be jettisoned, and whatever money is due to local government should be allocated to them directly. What is needed to ensure accountability is an effective system of checks and balances under the doctrine of separation of power. Furthermore, a proper system of auditing should be maintained to ensure effective use of allocated funds.

Other contradictory provisions on local government, such as the power of the state to conduct local government election, while the federal government through the INEC having the function of providing voters list for that election should be revisited. The level of

government that should conduct an election should also have the power of providing all that is needed for the election, otherwise disputes may arise which will stall the performance of that necessary function.

There is also need for a further relaxing of the application of *locus standi* to enable citizens to freely access the court to challenge the actions of those in governance especially those that are in outright breach of the provisions of the constitution, such as the appointment of caretaker committee and illegal removal of democratically elected local government officials.

Salient issues with regard to local government such as tenure of office of elected local government officials and public service of local government should be provided for directly by the constitution to ensure uniformity and to avoid confusion and arbitrary exercise of power.

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