

**CONSTITUTION AND LEGAL RELATIONSHIPS
OF STATES AND LOCAL GOVERNMENTS UNDER
THE 1999 CONSTITUTION.**

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1. Anomalies Concerning the Status of Local Governments

1.1 A Local Government is the level of Government closest to the ordinary Nigerian. Whilst there is only one Federal Government for Nigeria, and 36 States in the Country, there are 774 Local Governments. It is the very fact of its proximity to the common man that it is termed "local". The status of local governments in our constitutional arrangement is a little bit unclear. If local governments had been a subject belonging directly to the residuary list, i.e., an exclusive state responsibility, they ought not to have been mentioned in the Constitution. But the Constitution in Section 7 guarantees a system of democratically elected local government councils and directs States to ensure their existence under a law which provides for their establishment, structure, composition, finance and functions.

1.2 Thus the States have no freedom in the matter. They must establish local governments and this must be by democratic means; elections. Furthermore, the local government areas are actually listed in schedule one of the Constitution. This means that States can only create new local government areas under the cumbersome process prescribed in Section 8 of the Constitution, including the consequential approval of the National Assembly.

1.3 Finally although only a State Independent Electoral Commission can conduct an election into local government councils, they are compelled

to follow the procedures laid down by the National Assembly and use the Register of voters compiled by INEC.

2. Is it a 3rd Tier of Government or is it Totally Subsumed in a State?

2.1 Although local government is a residuary matter, it is one with some important qualifications or exceptions. Professor Nwabueze is of the view that Section 7 of the Constitution limits the powers of States over local governments in this passage.

“That provision is not a grant of power. It assumes that a state government has power over local government under some other provision of the Constitution. Its purpose is, by imposing a mandatory directive on how this power is to be exercised, to restrict it. With the restriction implied in this 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 that provides for the establishment, structure, etc. The concern is to ensure that a state government will not abuse its power, by, for example, using its own appointed agents to conduct the business of local government. The effect of the provision is thus to take away from a state government the discretion normally implied in a power. Instead, it obliges a state government not only to enact the necessary legislation to provide for the establishment, structure, composition, functions and finances of local government councils, but, more importantly, to ensure the existence of democratically elected local government councils under such law.” (The Presidential Constitution of Nigeria, C. Hurst & Co. London, 1982, pp. 58-59)

2.2 Therefore, although a local government is subsumed inside a state as part and parcel of it, in distinction to the Federal/State relationship which is one between two independent entities, each with its own areas of responsibility and authority, each autonomous of the other, there are several significant areas of activity in which the Constitution gives a local government direct powers and responsibility and others in which the Federal Government is given a direct role in local government administration, contrary to the principle of federalism.

Again Nwabueze has given an apt and accurate description of the situation.

“But the really significant point for our present purposes is not the basis of a state government’s authority over local government, but rather the fact that its authority is not exclusive in respect of every aspect of the matter. In this, our Constitution marks an innovation from the normal pattern of the distribution of powers under federalism. For local government, being an example *par excellence* of a matter of local concern, is universally recognized to be the exclusive responsibility of the state governments in accordance with the underlying principle of federalism which requires that, within the framework of a central government, matters of local concern should be managed by regionalized governmental units free from interference by the central government. Federal government involvement in local government is thus a contradiction of the very idea of federalism. The innovation of our Constitution has come as a concession to the extreme demand that local government should be established in the Constitution as a third tier of government, with powers and resources derived directly from the Constitution in exactly the

same way as the federal and state government.” (Nwabueze, Supra at p. 59)

2.3 Examples of Constitutional and Federal Government involvement in Local Government Administration include:

1. Prescribing the creation of local governments including their political character as democratic ones – Section 7 of the Constitution.
2. Prescribing the functions of a local government. Fourth Schedule of the Constitution. This is copied and repeated verbatim by the Lagos State Local Government (Administration) Law, (Section 36). The only subject added by the Lagos Law is the function of building and maintaining Obas’ Palaces.
3. Involvement of the National Assembly in the creation of new local governments. (Section 8(5))
4. Involvement of the National Assembly in procedures for local government elections. This includes, a law for the registration of voters (Schedule 2 Part II – Concurrent Legislative List, item 11).
5. The power to make a direct allocation to states of revenue for the States’ Local Governments. Section 162(3) (5) and (6) state as follows:

“S. 162 **(3)** Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

(5) The amount standing to the credit of local government councils in the Federation Account shall also be allocated to the States for the benefit of their local government councils

on such terms and in such manner as may be prescribed by the National Assembly.

- (6)** Each State shall 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.”

3. The True Status of Local Governments

3.1 These processes of accretion (slow and steady accumulation) of Federal interference in state ownership and control of their local governments has however not changed the legal character of local governments as essentially a residual subject within a state’s authority. A local government is not a third tier of government under the Constitution. The tiers of government remain only two, i.e., Federal and State governments as stated in Section 4 and 5 of the Constitution. As already noted, although Section 7 of the Constitution is a directive to states to create local governments with democratically elected councils, it is also a recognition of the fact that only States can create local councils. The local council or government is therefore a state creature.

3.2 This fact has become well established in a series of Supreme Court judgments. In Attorney-General of Abia State v. Attorney-General of the Federation [2002] 2 WRN; the National Assembly purported to have the power to legislate on the tenure of local government councils of the States. Firmly rejecting this view as a usurpation of State powers, the Supreme Court declared that local government councils are agencies of the states and that the Federal Government has no power or authority in local government affairs.

In the following words:

“By this section, the system of Local Governments is guaranteed and that every State Government shall ensure their existence by a law which provides for their establishment, structure, composition, finance and functions. It is very clear, from the provisions of the section without any iota of doubt, that every State Government must establish Local Government Councils in the state and this is to be done by a law of the state setting out the structure, composition, finance and functions of the councils. Although the section does not speak of the tenure of the Local Government Council specifically, it is my view that the power to establish a body implies the power to be responsible for the tenure of such body, particularly in this where no mention of tenure was made in the Constitution. This is also correct when one looks at the liberal interpretation to the provisions of the Constitution in this country since the inception of the 1979 Constitution from which the present Constitution originated.”

3.3 In Attorney-General of Lagos State v. Attorney-General of the Federation [2005] 2 WRN 1, Uwais CJN, declared thus at p. 68.

“The provisions of the Constitution pertaining to local government will be found in sections 3 subsection (6), 4 subsections (6) and (7), 7, 8 subsection (3) (5) and (6), 9 and 162(3) (5) (6)-(8) of the 1999 Constitution. All these provisions must be read together in order to interpret the provisions of section 162(3) and (5) – see the cases of *Ifezue v. A-G, of Ogun State, and Senate of National Assembly (supra)*. If this is done, what emerges is that for a new local government area (and therefore new local government

council) to be created the provisions of section 8 subsection (3) must be compiled with by the House of Assembly of the State where the local government areas or councils are to be created. Section 4 subsection (6) and (7) give the House of Assembly the powers to legislate for the State for the peace, order and good government of the State. Section 7 subsection (1) guarantees the existence of democratically elected local government councils and every State is directed to ensure that they exist under a State Law which provides for their establishment, structure, composition, finance and functions. Section 8 subsection (3) specifically vests the State House of Assembly with the power to pass a bill creating a new local government area. When this is done, a return is to be made by the House of Assembly to the National Assembly for the purpose of enabling the latter to exercise its powers under section 8 subsection (5) of the Constitution. This power entails the making of consequential provisions with respect to the names and headquarters of the local governments area provided in section 3 and part I of the first schedule to the Constitution.”

4. The Power to Dissolve Local Government Councils and set up Caretaker Committee/Administrators

4.1 It has become very common for a new Governor on being sworn into office, to dissolve all the local Councils of his State, if he belongs to a different party from that of his predecessor. He then appoints Caretaker Committees or Administrators in their places. How legally valid is this exercise of power?

4.2 Let us remind ourselves again of Section 7 of the Constitution which directs States to establish a system of local government by democratically elected local government councils.

On the face of the clear provisions of the Constitution, it has to be unconstitutional for the executive to directly remove elected public officers, and worsen matters by imposing unelected (selected) persons in their places.

4.3 Importantly in Nigeria, over 75% of all States' local government elections are rigged in favour of the ruling party. Infact, the election results are always 100% in favour of the ruling party. Even so this is no justification for the dictatorial executive dissolution of elected councils.

4.4 This at any rate seems to be the view of our Courts. In Victor Akan & Anor v. Cross River State & Ors [1982] 2 FMR 177, in which the State Governor dissolved all the Local Government Councils of Cross River State under the authority of a law passed by the State House of Assembly, the Cross River State High Court declared it unconstitutional, null and void and set it aside.

4.5 Again in Akinfolu & Ors v. AG Oyo State [1982] 2 FMR 48, the trial judge held (at p. 221) as follows:

“A fortiori, the setting up of a Caretaker Committee to replace a democratically elected Council is clearly unconstitutional, illegal and ultra vires the powers of the 2nd respondent” [i.e., The Governor]

4.6 The case of Akpan v. Umah ([2002] 23 WRN 52) contains a detailed statement of the Law in this regard. According to Ekpe, JCA,:

“In as much as I do not doubt the legislative power of the State House of Assembly to make a law to regulate a Local Government Council in the state plagued with crisis or to make a law to prescribe for an event upon which happening a Local Government Council is dissolved or the Chairman or Vice Chairman of a Local Government Council is removed or vacates his office, but 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 is inconsistent with the clear and unambiguous provision 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.”

Per Ekpe, JCA [P. 70] lines. 5 – 40.

“On the other hand, I entirely agree with the submission of the plaintiff/1st respondent that the dissolution of Ini Local Government Council and setting up of the Caretaker Committee by the 2nd respondent (the Governor of Akwa Ibom State) is a violation of section 7(1) of the Constitution. I hold the view that since section 7(1) of the 1999 Constitution guarantees a system of Local Government by democratically elected Local Government Councils the dissolution of Ini Local Government Council by the 2nd respondent and the appointment of the Caretaker Committee is inconsistent with section 7(1) of the 1999 Constitution and therefore null and void.” – At page 72.

“From the language of the above provisions, it is crystal clear that the exercise by the Governor of his executive powers is subject to the provisions of the Constitution itself and any law validly made

by the State House of Assembly. In exercising his executive powers, the Governor must act within the Constitution and any law validly made by the House of Assembly. Put differently, there is nothing in our law like a blank and arbitrary power vested in or possessed by the Governor outside the Constitution and the law, and such a power if exercised, will lead to executive lawlessness and recklessness which have often times, been decried and condemned by the Nigerian society. The legal position therefore is that the Governor as the Chief Executive of a State is by the 1999 Constitution vested with executive powers of the state which extend to the execution and maintenance of the Constitution and all laws made by the State House of Assembly, and to all matters with responsibility to which the State House of Assembly has powers to make laws and these executive powers must be exercised by the Governor in accordance with the provisions of the Constitution and the law. I therefore reject the submission of the appellants that the 2nd respondent acted under section 5(2) (a) and (b) of the 1999 Constitution to dissolve Ini Local Government Council and set up a Caretaker Committee made up of the appellants in the place of the democratically elected Councillors of the said Council." At pages 71 – 72.

- 4.7** All the above is subject to the condition precedent that the local councils have not been installed illegally, either because they were not elected in the first place or the courts have already pronounced them as illegal entities.

In any event, the best way to resolve such disputes is to take the matter to the Court. In a democracy, the Rule of Law is Supreme.

5. Removal of Local Government Officials by the Governor of Lagos State

5.1 In the light of the above, it is necessary to consider the provisions of section 1(2) of the Local Government Administration (Amendment) Law 2006. This law empowers the Governor of Lagos State to remove or suspend any Chairman, Vice-Chairman or Official of any Local Government Area or Local Council Development Area in the interest of peace, order and good governance in the following circumstances:

- (i) "After necessary investigations" [presumably for wrong doing] by the Lagos State House of Assembly.
- (ii) The Governor may on his own initiative suspend such an official in the interest of peace, order and good governance, pending the investigation by the State House of Assembly.

The provision replaces the cumbersome and protracted procedure in the Local Government Administration Law under which the removal of a chairman or vice-chairman of a local government is subjected to the same impeachment procedure that applies to Governors and Deputy-Governors.

5.2 My understanding of this provision therefore, is that if a Chairman, Vice-Chairman or some other official of any local government or local council development area, is suspected of having committed an offence contrary to his oath of office, (it could be fraud, corruption, a serious act of violence, acts of oppression, acts in violation of democracy and the rule of law, etc) he could be subjected to investigation by the House and

if found guilty, he could (if the House deems it fit) be recommended to the Governor for removal or suspension from office.

5.3 Being a recommendation, the Governor is free to accept or reject it.

It is important to stress that such investigation must afford the official the opportunity to be heard either by himself or through counsel. Failure to observe this rule will make the whole proceedings a nullity.

5.4 How consistent is this provision of the Local Government Administration (Amendment) Law with the Constitution. A Governor can only be removed by impeachment and a member of the House of Assembly can only be removed by recall. Should these cumbersome provisions also apply at the local government level? I think not. Government at that level should be simple, versatile and dynamic.

An investigation by the House of Assembly in which the right to fair hearing is observed would appear to meet the case at this level. Otherwise, the administration of local government could become bogged down with cumbersome procedures, creating delays and stalling good governance and effectiveness. What is more, this amendment is not dealing with wholesale dissolution of councils but with specific cases of official misconduct