LOCAL GOVERNMENT SYSTEM UNDER THE 1979 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA - AN APPRAISAL

BY

ABBAS ALHAJI BELLO

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DECLARATION

I hereby declare that this dissertation has been written by me and it is a record of my own research work. It has not been presented in any previous application for a higher degree. All quotations are indicated and the sources are fully acknowledged.

ABBAS ALHAJI BELLO

23/12/82

CERTIFICATION

This thesis entitled "Local Government System under the 1979 Constitution of the Federal Republic of Nigeria - An Appraisal" meets the regulations governing the award of the Degree of Master of Laws (LL.M) of Ahmadu Bello UNiversity and is approved for its contribution to knowledge and literary presentation.

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D E D I C A T I O N

TO

MY LATE FATHER

ALHAJI MUHAMMADU BELLO PAIKO

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ABSTRACT

The main purpose of this thesis is to analyse and appraise the constitutional basis of Local Government in Nigeria.

Chapter One discusses various definitions of local government in Nigeria, but more particularly its definition as entrenched in the Guidelines to local government reforms. It highlights on the decision to recognise local government in the 1979 Constitution of the Federal Republic of Nigeria and its importance in the provision of public services. The later part of this chapter looks into the Executive Judicial and Legislative roles played by local government before the 1976 reforms and thereafter.

Chapter two discusses briefly the historical evolution of local government in Nigeria from the colonial epoch to post independence epoch; the Military epoch to the local government reforms of 1976. The Chapter also discusses briefly the workings of local government in United Kingdom, France and the United States of America.

Chapter three discusses inter governmental relations in Nigeria.

The main focus of this thesis covered under chapter four is to provide a detail account of constitutional basis of local government. It highlights on section 7 of the 1979 constitution which recognises and guarantees the existence of local government in Nigeria. It further discusses the constitutional functions of local government council; the criteria for creating local government and its corporate personality.

Chapter five deals with the doctrine of judicial review and Public Officers Protection Act as applicable to local governments in Nigeria. It further states the judicial remedies against local government. These remedies include - Mandamus, Certiorari, Prohibition, Injunction and Habeas Corpus.

Chapter six deals with electoral process under local government.

Chapter seven deals with conclusion. It highlights on the success and failure of the 1976 reforms and the recent trend in the development of local government in Nigeria. In Nigeria, the system of local government has over the time undergone series of changes. Since local government changes over time, this chapter states the constraints hindering effective performance of local governmnet. The chapter ends with recommendations that would make local government councils to achieve the aims and objectives for which they are established.

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LIST OF ABBREVIATIONS

ALL ER	All England Report
APP. COS	Appeal cases
ALL. NLR	All Nigerian Law Report
Ch.	Chanchery
Ch. D	Chanchery Division
ENLR	Eastern Nigerian Law Report
K B	Kings Bench
NMLR	Nigerian Monthly Law Report
NWLR	Nigerian Weekly Law Report
Q B	Queen's Bench
WACA	West African Court of Appeal
WNLR	Western Nigerian Law Report.

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CHAPTER 1

1.1. GENERAL INTRODUCTION

This thesis is principally concerned with the analysis of two aspects of local government in Nigeria. Firstly, it is to establish the legal status of local governments in Nigeria under the 1979 Constitution. Secondly, it aims at analyzing the status of local governments after the 1976 reforms, but more particularly after their establishment as a tier of government by the 1979 Constitution.

In 1963, local governments in Nigeria had no Constitutional status, yet, in practice they maintained a strong police force, a judiciary, ran the prisons and health services and had a strong base for revenue generation. However, from 1963, their powers were gradually eroded and they were more subjected to the various regional governments. In this regard, local governments operated according to the whims and caprices of regional authorities.

The 1979 Constitution for the first time established local governments as a recognised level of governmental power. Moreover, it recognized the establishment, composition and financial power of local governments. Furthermore, the constitution spelt out their functions under schedule Four. These changes appear to have been influenced directly by the 1976 local government reforms.

In theory local government after the 1976 reforms and 1979 Constitution can be considered better placed in terms of their executive, legislative and judicial powers. In practice however, local governments appear to have lesser functions than hitherto the reforms.

The problem here is to reconcile the inconsistency of local governments with enhanced constitutional powers carrying on lesser functions in practice (after 1979) and the reverse of this situation before the 1976 local government reforms. In otherwords, local governments discharged more functions before 1976 despite the lack of Executive, Legislative and Judicial powers than under the 1979 Constitution.

This thesis also discusses the historical evolution of local government in Nigeria. Writing on the local government system before colonialism, Heineckle had this to say:

> "Pre-Colonial local government derived its powers locally. The chief was selected by the people through their representative ....." (1)

However, a more organised system of local government was introduced in Nigeria by the British Colonial Administration in the early part of 1890's to the 1930's. The colonial authorities introduced the indirect rule which sought to establish a form of local administration through traditional authorities. Indirect rule succeeded in the North and West, but failed in Eastern part of Nigeria. By 1960, the prestige and responsibilities of local authorities declined sharply. As a further response to the recognition that local governments should occupy their rightful position in the political framework of the nation, a major reform was initiated in 1976 by the Federal Military Government. The reform recognised the local councils as the third tier of governmental activities in the country. It was meant to "do precisely what the word government implies ....." i.e. governing at the grassroot level and thereby bringing the government nearer to the people and making it responsive to the needs of those at this level.

It further discusses the workings of local government in United Kingdom, France and the United States of America. United Kingdom was

choosen as a reference in view of the colonial relation between her and Nigeria. Local Government in France operates exactly opposite to what is obtainable in Nigeria while the workings of local government in the United States of America was choosen to give a detailed workings of local government in a federated system.

This thesis also highlights on section 7 of the 1979 Constitution which recognises and guarantees the existence of local government. Local government is a corporate body. It can sue and be sued as was held in WILLIAM ESOM AND OTHERS V. OJI LOCAL GOVERNMENT COUNCIL AND ANOR.(2) Similar decision was held in G. O. K. AJAYI V. LAGOS CITY COUNCIL.(3)

1.2. DEFINITION OF LOCAL GOVERNMENT

What is a Local Government? The term 'Local government' has been defined as a "political sub-division of a nation or (in a federal system) state which is constituted by law and has substantial control of local affairs. The governing body of such an entity is elected or otherwise locally selected."4 The substantial implications of this definition are:

(a) the representatives of council members;

(b) the force of law which gives members the powers to exert control within defined areas; and

(c) the complementarity of local government functions with that of the central and/or state government.

According to the GUIDELINES ON THE LOCAL GOVERNMENT REFORMS, 1976, Local government in Nigeria is a:

> "Government at 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 powers to initiate and direct the provision

> of services and to determine and implement projects so as to compliment the activities of the state and federal governments in their areas, and to ensure through devolution of functions to these councils and through the active participation of the people and their traditional institutions that local needs and conditions are maximised." [5]

From the above definition, it could be seen that local governments are specifically created in Nigeria to govern at the grassroot level. This view was also expressed by Brigadier Shehu M. Yar'Adua (as he then was) when he said:

> "The Federal Military Government has therefore decided to recognise local governments as the third tier of governmental activity in the nation. Local governments should do precisely what the word government implies, i.e. governing at the grassroots or local level." [6]

Similarly, Oladeinde Olopade stated that:

> "Local government is the breaking down of a country into units of localities for the purpose of effective and official administration in which inhabitants of the units play a prominent direct role through their elected representatives." [7]

In England, according to G. Wilson, local government is not seen merely as a provider of services. The importance of local government lies in the fact that it is the means by which people can provide services for themselves; can take active and constructive part in the business of government; and can decide for themselves, within the limits of what national policies and local resources allow, what kind of services they want and what kind of environment they prefer. Also, through local representatives people throughout the country can, and practice to build up the policies which national government adopts by forcussing attention on local problems by their various ideas of what government should seek to do, by local initiatives and local reactions."

Wilson went further to state that:

> "local government is the only representative political institution in the country outside parliament; and being by its nature, in closer touch than parliament or Ministers can be with local conditions, local needs, local opinions, it is an essential part of the fabric of government." 8

Thus, the premises on which local governments are built are administrative efficiency, education at the grassroot level and political convenience or considerations. These premises are applicable in Nigeria. Administrative efficiency is concerned with the efficient provision and administration of essential social services, hence the necessity to create smaller units of administration closer to the people by the centre while education is intended to teach the local citizens the art of local self government.

Local government is concerned with the regulation and administration of local affairs by the people inhabiting the locality through their own representatives body made up largely of democratically elected members. The term "local government" pre-supposes the existence of a local community having a will of its own which must be discovered and respected by giving it due consideration in the formulation of public policies.

Thus, local government provides opportunity for the local community to determine their own political, economic and social destiny by actively participating in the making and execution of decisions that affect them in their everyday lives i.e. managing their own affairs in the way they see fit.

There was a considerable debate in the then Constituent Assembly on the issue of the status of local government under the 1979 Constitution. Should it be included in the Constitution? Should it be an independent third level of government? The debate indicate that there was widespread feeling in the Constituent Assembly that local government must be provided for in the Constitution. As Alhaji M. A. Rimi former Governor of Kano State

summed up the position of supporters of detailed entrenchment of independent local government:

> "Local government is the most important government of our land. The local government is the nearest and most immediate government to the man. The man in my village does not care about who the President of Nigeria is. He does not even care about who the Governor of Kano State is. He cares only about those who are councillors and chairman of his local government ..... we should go to the whole hog and state the functions and the powers of the chairman and even go to the extent of stating how to conduct local government election." [9]

The above quotation is applicable to all States of the federation. Hence local government system came to be recognised and entrenched in the 1979 Constitution.

1.3. IMPORTANCE OF LOCAL GOVERNMENT IN THE PROVISION OF PUBLIC SERVICES:

There are many powerful and compelling reasons for maintaining an effective system of government at the local level which is responsible to the local populace.

According to the Guidelines to Local Government Reforms, local governments are potentially better placed than the state or federal governments to provide to a large extent the necessary social services such as dispensaries, environmental sanitation and other basic health facilities, feeder roads, basic education, water supply and other facilities on which the well-being of the whole nation depends, provided they (local governments) receive adequate, genuine and whole hearted support which they very well deserve from the higher levels of government. This is because of their familiarity with local details and their intimate knowledge of the problem and aspirations of the local community.

Local officials can make or mar effective social and economic development plans, for if they lack understanding of the objectives of the plan and are not committed to it, the prospects of advancement in the field of economic and social development are simply bleak. Local implementation of the national development plan is essential. It is preposterous for the federal/state governments to think that they are in a position to implement the national plan in all its details. Even though the petroleum sector is the backbone of the economy now, development encompases economic, educational, agricultural, social developments. The degree of acceptability of local government as an implementing authority at the grassroot is likely to be far greater than that of a state or federal government.

Local governments have a crucial role to play in the field of agriculture which used to be the backbone of the Nigerian economy. They are better placed than any other level of government to make significant and positive contributions to increase agricultural production by encouraging the participation of the Nigerian farmers found mostly in rural areas. By improving the level of productivity in rural areas as well as the living condition of the people therein, more food will be available, the influx of unemployed but employable people to urban centres will be checked, small scale labour resources will be effectively developed, utilised and markets for locally produced goods and services will be provided.

Through rural activities medium and small scale industries can easily spring up forming the nuclei of a network of rural growth centres. For instance, many of the industries in Taiwan are located in the country side as a result of the initial emphasis that country placed on rural development. From available evidence, in the early 1960's shows that only 34% of its industrial employment were located in the capital and regional cities which had only 22% of its total population. [10]

1.4. EXECUTIVE, LEGISLATIVE AND JUDICIAL FUNCTIONS BEFORE AND AFTER THE 1976 REFORMS:

Before the 1976 local government reforms, and to be precise by early 1960's, local governments performed executive functions. Even though they were not constitutionally recognised by the 1963 Constitution, each local government had a council headed by a Chairman and other councillors were members. The council took decisions and implemented such decisions according to the extent of powers conferred upon them by the regional governments. To that extent, they performed executive functions. Secondly, local government performed quasi-legislative functions by enacting bye-laws. These bye-laws were however, subject to scrutiny by the government before they are passed into laws. Thirdly, local governments had quasi judicial powers. They controlled the local government judiciary, they maintained the prison service, the police force, appointments and dismissal of judicial officers was carried out by local governments.

After the 1976 local government reforms, local governments were denied all the judicial powers, even though they are recognised as a tier of government in the 1979 Constitution. They performed executive functions by holding meetings and taking decisions that affect the people, they enter into contracts etc. Local governments still make bye-laws as they did before the 1976 reforms.

In accordance with the spirit of 1976 reforms, the 1979 Constitution gave legal recognition to the existence of local governments. It provided that:

> "the system of local government by democratically elected local government councils is under this constitution guaranteed; and accordingly, the government of every state shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils. [11]

Hence each state of Nigeria promulgated edicts in conformity with the 1979 Constitution. In Niger State for example, a section of the 1976 Local Government Edict states as follows:

> "(1) A Local Government shall have such powers and duties as are conferred or imposed upon it by this Edict or any other enactment.
>
> (2) It shall be the duty of every Local Government established under this Edict -
>
> (a) to discharge the duties and obligations imposed by or under this Edict or any other enactment and;
>
> (b) generally to assist in maintaining order and good government within the area of its authority." 12

Under the 1979 Constitution, Local Government councils have no judicial powers by virtue of Chapter VII, sections 228 to 282. Only courts have powers to adjudicate over cases although, they have powers to make bye-laws. Local Government Councils do not possess any power to legislate by virtue of Chapter V, sections 45 to 127. However, they perform executive functions by taking council decisions and the 1979 Constitution specifically spelt out the executive functions of local government thus:

> " (3) Subject to the provisions of Constitution, the executive powers of a local government -
>
> (a) shall be vested in the chairman of that local government council and may, subject as aforesaid and to the provisions of any law made by the House of Assembly of the state within whose boundaries the local government area is situated and bye-laws made by the local government council be exercised by him either directly or through the Vice-Chairman or Supervisory councillors of the local government or officers in the service of that local government; and

(b) shall extend to the executive and maintenance of this constitution, all bye-laws made by the local government council and to all matters with respect to which the local government council has for the time being power to make bye-laws; but such executive powers shall be so exercised as not to impede or prejudice the exercise of the executive powers of the Federation or of the State in which the local government area concerned is situated or to endanger assets or investments of the government of the federation or of the state government in the Local Government Area." 13

Local governments therefore perform executive functions, they perform quasi judicial functions and they do not legislate.

FOOTNOTES TO CHAPTER I

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CHAPTER II

BRIEF HISTORICAL EVOLUTION OF LOCAL GOVERNMENT IN NIGERIA

2.1 INTRODUCTION

Local government in Nigeria, just like the Nigerian State is a colonial creation. It has undergone a lot of vississitudes and reforms, the most popular of which has been the 1976 reforms, which informs the framework of operation today. This chapter discusses briefly the historical evolution of local government in Nigeria from the colonial epoch to post Independence epoch, the military epoch to the local government reforms of 1976 and what obtains after the reforms. It further discusses briefly the working of local government in United Kingdom, France and the United States of America.

In Nigeria, the system of local government has over the time undergone series of changes.

Local governments in Nigeria can be said to have developed through stages namely: The Colonial Epoch, post Independent Epoch and nation wide 1976 local government reforms.

Prior to the advent of the British, governments in Nigeria were more "local" than "Central"; the traditional authority in each part of the territory being the pivot around which the indegenous system of government rotated. Even the moslem Fulani emirates in Northern Nigeria, Kingdoms in Western Nigeria and the Kingdoms in Mid-Western Nigeria with their centralised ruling machinery were more local than central when compared with what "Central government" connotes nowadays. They were close to the people and the principal officers of the state were the local notables; they dealt with issues that were of local relevance and which affected the people in the hamlets, villages and towns intimately in addition to their dependence completely on revenue locally generated. In most of Eastern Nigeria, government was highly decentralized; government was based on clan or family heads. The units

of government was very small composed of family heads; and title holders who constituted the council of elders. Concensus was the basis of decision making. Whereas the indigenous system of government in Western Nigeria was a kind of constitutional monarchy, the system in Eastern Nigeria was republican unlike the autocratic system in Northern Nigeria where so much power was concentrated in the hands of the Emir who could ignore the advice of the council of state or decide not to consult it at all.

Writing on the local government system before colonialism Heineckle had this to say:

> "Pre-colonial local government derived its powers locally. The Chief was selected by the people (through) their representative....."[14]

Although the pre-colonial system of local government was exploitative, it contained sufficient checks and balance to prevent abuse of office.

2.2 THE COLONIAL EPOCH

A more organised system of local government was introduced in Nigeria by the British Colonial administration in the early part of 1890's. The Colonial Native Authorities represented a system of indirect rule which sought to estblish a form of local administration through traditional authorities. According to Lord Lugard -

> "there was no desire to impose on Nigerian people any theoritically suitable form of government but rather to evolve from their old institutions, based on their own habits of thought, prestige and custom, the form of rule best suited to them and adapted to meet the new conditions....."[15]

Indirect rule was introduced in Nigeria. It was a system whereby the Colonial Authorities used the existing administrative indigenous system in Nigeria to rule the colonies. Lugard himself justified the adoption of the policy of indirect rule in Nigeria on three main grounds:-

(1) That the large staff which was needed for indirect administration was not available.

(2) That a similar policy had been operated successfully in the Indian Native States, the marked difference in the status of Indian chiefs being acknowledged.

(3) That it would have been preposterous to attempt drastic reforms which would dislocate traditional administration, without a great deal of knowledge of local conditions.

The introduction of indirect rule in the Northern provinces was a great success. Three factors helped its application in the North:

(1) The existence of a fairly stable and centralized political organisation. Before the introduction of the system into the Northern provinces, a traditional administrative system existed in the communities of the territory.

(2) Moslem courts were already operating and there was a professional elite, the Mallams, who were learned in Quranic law and scripture.

(3) The existence of a hierachy of officials formed by the Waziri (the chief Minister), the Alkali (chief Justice) and the Dogari (chief of police). Lugard adopted these essential traditional institutions.

Based on this background, Lugard made various innovations which included: the granting of Emirs full authority but appointed British officials known as Residents to guide and advice the important Emirs. The British officers' function was to transmit all orders of administration to the people through the Emir or his representatives. Secondly, the British authority exercised its control by means of its legislative authority and its power to approve rules made by the traditional authorities. Thirdly, the practice whereby Emirs raised and controlled armed forces and indulged in slavery was prohibited; the traditional courts were reconstituted and instead of tributes, a fixed salary was to be paid to chiefs and Emirs. Other innovations introduced included the collection of taxes which were handed over to the Emirs and the practice of paying tributes, was abolished and instead a uniform tax was levied on the population under the direction and supervision of the Government.[16]

With the success of the system in the former Northern Nigeria, Lugard became interested in introducing similar policy in Western Nigeria. There was initial opposition to the system. The traditional rulers did not as a class, possess the measure of personal command which the Hausa and Fulani rulers had acquired. The new system appeared strange to the Yorubas. However, the system was subsequently established in the West and East. After some initial difficulties, it worked well in the West. In the East, where the British authorities, influenced by the social structure of the North and the West, created autocratic paramount chiefs, the displacement of the natural rulers and the novelty of the institution generated hostility, for the Eastern people could not readily reconcile

the new system with their own largely democratic institutions. Eventually the system was a total failure in the East. [17]

Therefore, inorder to pursue this policy effectively, the Native Authority Ordinance of 1910 was enacted for the establishment of Native Authorities first in the North and later in Southern Nigeria.

Various Ordinances were enacted, among which was the Native Court Ordinance No. 44 of 1933 which made provisions for the establishment of a Native Court by warrant specifying the powers and determining its constitution. Provisions were also made for Alkali (Moslem Customary) Courts in Northern Nigeria to have assessors. Such assessors were persons learned in some particular science or industry, who sit with a judge or judges on trial of a case requiring such special knowledge and gave advice.

The 1950's witnessed the rise of modern local authorities. For the first time, there existed elected local government councils based on the British model.

In the North, a number of reform measures were introduced in the Native Authority Law of 1954 in response to the democratic need of the people. The sole Native Authorities were transformed into chief-in-council, chief-and-council and federated native authorities with non-traditional members either being elected or nominated. In the Chief-in-council system (the Native Authorities were in this category) and the chief had to work with the council and should normally follow the council's decisions. The chief as an executive Chairman of the council

could go against the council's decision if he believed he should do so in the interest of good government and welfare of the people of the area. He should not do so without adequate reason and whenever he did so, he must inform the Governor - in - council. On receiving such information the latter might cause the issue to be re-opened and if no joint decision could be taken, then the Chief's decision would be backed up by the Governor-in-council. The Chief-and-council type of Native Authority was by far more restricted than the chief-in-council type. Under this dispensation, the chief was also the executive Chairman of the council and was bound by law to abide by the council's decision. But in practice, it was operated like the first type - the chiefs acting as chiefs-in-council.

The third type of Native Authority is the "council", i.e. "the council of federated Native Authorities." The law provided that the smaller Native Authorities which were too poor in terms of physical size, financial and human resources to provide efficiently a wide range of essential socio-economic services should federate to form a big and viable native authority.[18]

The Northern Native Authority Councils were given a wide range of functions and full powers to control their staff as well as reasonable latitude to raise funds from community tax and other rates. During this period, serious efforts were made to set-up modern personnel systems in local government by the establishment of local government service board to improve the working conditions of staff, thus bringing them as far as possible in line with those of the civil service.

For the Eastern part of the country, the situation was not the same. By 1950, a local government Ordinance was enacted for the Eastern Region. By this, the Region became the first West African government to abolish native type of local government. It gave to the councils far greater powers, including the power of taxation than the preceeding authorities enjoyed. This innovation was followed two years later by the Western Region's Local Government Law of 1952. It came with the Mcpherson Constitution and was regarded generally as the Western watershed between native and local administrations because it adopted the English three tier system - Divisional, District and Local councils, also with much wider powers than had been assigned to the erstwhile Native Authorities. The Divisional Council covered the whole of an administrative division embracing several districts and/or local councils. The District Council had jurisdiction over an urban and/or rural area, while the local Council usually operated in rural areas. Membership in local authorities were of three kinds:

(1) traditional chiefs within the area of the council, who were permanent members, but whose number was fixed at one third of the elected members;

(2) members who were elected by secret ballot and universal adult suffrage for a term of three years; and

(3) women nominated by the Regional Government, at a ratio of 1 to 10 of the elected members, but not more than six.

The changes that took place in the local government system of Southern Nigeria were in the fifties not so apparent in the North. While the Northern Government did not reject the principle that the authorities must become more representative and more efficient, they resolved to retain the term "Native Authorities" and opted for gradual and more flexible changes. Furthermore, instead of providing for'tiers' of councils, with specific names, the Native Authority Law of 1954 made a much flexible arrangement, under which the premier could constitute a native authority while the Minister of local government could similarly constitute any council or any group of persons.[19]

Although the various local authorities in the country were created in the early fifties to perform localized functions, many of them were found to be ineffective, consequently further changes had to be introduced. For instance, the Government of Western Region had to introduce a local government amendment law of 1958. This law enabled the Governor to support a 'sole Administrator' to perform the duties of a council which had become intolerably inefficient.

The period of the early sixties in the West was not too different. Various experiments were attempted, yet they were hampered by financial and bureaucratic constraints despite the availability of qualified councillors.

Just like in the East, excessive political interference and a low level of financial capacity made very little meaning of local governments in the West and their capabilities. That is why Adedeji and Rowland had this to say while comparing the South and North:

> "..... if for any reason the Northern Native Authorities were to cease to function, the wheels of government in the region would probably grind to a stand-still. On the other hand, if the regional government were to pack up .... the Emirates could carry on without much trouble....., for the Southern Regions on the contrary, if the local authorities were to cease to function something very real and important would be lost but the regional government would not be seriously embarrassed, it could quite easily cope with their functions. On the other hand, without the regional government, most local authorities would be more or less at sea."[20]

2.3 POST INDEPENDENT EPOCH

By 1900, the prestige and responsibilities of local authorities declined sharply. In the former Western Region, the first blow was struck at the financial authonomy and the viability of councils by the Local Government (amendment) law, 1960 which abolished the powers of councils to levy education and general rates on the basis of need, and as a result of increased urbanization the rate of tax evasion rose and led to a static or decreasing number of actual tax payers. As taxes/rates constituted 40 - 50% of the councils internal revenue, the little revenue acquired could not maintain the standards of services attained, let alone provide for the improvement or expansion of services. In Lagos, property rates provided a steady source of local government revenue. Even here, default by property owners including government organisations reduced the rate of expansion of this source of revenue to level below that needed to maintain and improve services in a fast expanding metropolis. The situation in the former Eastern Region was not better than what existed in the old West.

2.4 THE MILITARY EPOCH

On January 15, 1966 there was a Military take-over of government in Nigeria. One of the first few decisions taken by the military regime was the dissolution of all local government councils and the Native Authority staff in Northern Nigeria for example, were banned in 1967 from participating in partisan politics apart from voting in elections. Administrative Officers were appointed Sole Administrators to replace the dissolved councils, some of which were elected and democratically constituted. The pendulum thus swang from Sole Native Authority to Chief-in-Council or Chief and Council back to Sole Administrator. The inherent tendency towards centralization in a Military regime was thus responsible for the national approach to local government matters in Nigeria as from this period.

Before the Gowon regime was ostracized, the Udoji Commission was and charged with responsibility of how the public services including local governments could be improved for the development of the country. The Commission recommended the following in respect of local government:

(1) "The country should adopt the simple tier of local government system with about 100,000 people under each local government.

(2) Each of the state governments was to set up a committee to examine the financial and functional relationships that should exist between the state and local government.

(3) Research and development planning units were to be set up to assist local governments.

(4) Councillors in rural areas were to be elected through the electoral college process. In the urban areas, election was to be by direct method.

(5) Whilst the local council was to continue as the policy making body of the local authority, it was to leave the day-to-day administrative running of affairs of the local government to an executive secretary.

(6) Specific recognition was also to be given to the administrative functions of the traditional rulers.

(7) Grants to the local governments towards their operating expenses were to be paid quarterly. With respect to capital grants fifty percent was to be paid when a job was started and the balance only when the job was completed."[21]

These major recommendations on the local government system were in general accepted along with others in the report by the Gowon government.

In 1975, there were attempts to reform the local government system by the Military Governors of some states in Nigeria. The Governors could not achieve much in that they only introduced what they called "Development Administration," "Community Council" etc. Since local government could not perform their essential services for the people, a vacuum was created at the grass root level. It was this state of affairs that prompted an urgent need for reformation which led the Military Government that came to power in 1975 to engage in the historic general reforms of the local government system in Nigeria.

The Local Government Reform of 1976 is one of the most radical measures ever introduced during the Military rule in Nigeria. It is radical in two fundamental respects. Firstly,

unlike all preceeding reforms of local government; it established a comprehensive uniform system of local government within a national framework. Secondly, it brought a new dimension of population requirement to the creation of local governments. The reform was clearly reformal in its general intentions, and radical in its implications.[22]

Before the introduction of the new local government system, it was noted that the old local government system was characterised by many defects such as corruption, embezzlement of public funds, nepotism, inefficiency, lack of funds, etc. This state of affairs was the cause of the local government failure to make the desired impact at local level. Government was thus, far from the rural populace, excessive politicising made even modest progress difficult. In other words, there was a clear divorce between the people and the Government Institutions at their most basic grass root levels.

The Military Administration was of the opinion that because local governments are closest to the local population, they help in no small measure to cultivate the spirit of self-determination in the minds of their people. If rural dwellers are encouraged to benefit from the prosperity of this country, through the availability of amenities, e.g. electricity, adequate water supply, improved transport system, health facilities etc, our youths may choose to stay in their respective local government areas because their areas are just as attractive as urban.[23]

Before the reforms of 1976 at the national level, the Federal Military Government reform measures of 1970 did not make any significant impact except to say that they were perhaps compatible with the Federal Government's intention of exclusive

control over justice, prisons and police. These measures involved simultaneous abolition of the Native Authority Police, Prison Department, the Emir's Judicial Councils and Judicial Authority of Alkali and Customary Courts of the State Judiciary. Empirically one must say that these measure effectively curtailed the traditional authorities powers and deprived them of the most important outward manifestation of their authority. At the same time, these measures, also deprived politicians at the Local levels the use of Native Authority police against their political opponents. These measures did not involve structural changes in the existing administrative local government structure of the country.

Generally and with the preceeding background, the Military rulers appeared not satisfied with all previous local government reforms because they were not free from defects of one government or the other. The discussion on the local government reforms was set in motion late 1975 through the establishment of a small coordinative committee, while various state governments were charged with the task of re-organising their respective local government system.

It was later discovered, however, that an uncoordinated approach to local government reform would result in chaos and respective agitations from various communities for one type of local government or the other. The whole country was therefore divided into zones and each was directed to prepare papers on local government reforms, particularly on definition and functions of local government, financing of local government, etc. Recommendations of these zones were collected and collated at the national level. With this, the Federal Military Government came up with National Guidelines which all state Governments

had to follow in the creation of their new local government areas.

The justification for these changes are contained in the speech of Brigadier Shehu Yar'Adua (as he then was) when he said:

> "The defects of previous local government systems are too well known to deserve further elaborations here. The state government have continued to encroach upon what would normally have been the exclusive preserves of local government. Lack of adequate funds and appropriate institutions had continue to make local government ineffective and uneffectual. Moreover, the staffing arrangements to ensure a virile local government system had been inadequate. Excessive politiking had made even modest progress impossible. Consequently, there has been a divorce between the people and government at their most basic levels. In producing these reforms, the federal Military Government was essentially motivated by the necessity to stabilise and rationalise government at the local level which necessitated the decentralisation of some significant functions of state government to local level for rapid development."

The aims and functions of local government as given in the Federal Government Guidelines and subsequently enacted in the States edicts are as follows:-

(a) "To make appropriate services and development activities responsive to local wishes and initiatives by devolving or delegating them to local representative bodies;

(b) to facilitate the exercise of democratic self government close to the local levels of our society and to encourage initiative and leadership potentials;

(c) to moblise human and material resources through the involvement of members of the

public in this local development; and

(d) to provide a two-way channel of communication between local communities and government."[24]

From the above, it is clear that these reforms differ fundamentally from all preceeding reforms. Firstly, the term "Local Government" was itself clearly defined in the Guideline as a third-tier of government based on the principles of representation participation, devolution and autonomy. Secondly, each local government was expected to have a population between 80,000 to 150,000. In other words, the local government reforms aimed at the entire re-organisation of the previous structure of the local governments within their areas of jurisdictions and strengthening the effectiveness and administrative machinery at the grassroot levels. The reforms was therefore a deliberate process of rural development through which the Federal Government felt the standard of living at the grass root levels would be enhanced politically, socially and economically.

In Niger State, the local government reform was launched in August, 1976 and the following salient reasons why the federal government was prompted to embark on the reforms in the country were stated:

(a) "That the local government reform is the first major cardinal step in the Federal Military Government programme for a return to civilian rule;

(b) that the main purpose of the reform is to ensure even and rapid development at local levels throughout the country;

(c) that the reform is intended to ensure participation at the grassroot levels;

(d) that by consciously cultivating development at local levels, it is possible to arrest drift from rural to urban centres and its subsequent social maladies; and

(e) that the reform is not intended to erode anybody's authority but rather to enhance development and progressive government."[25]

The Guideline also indicated that it was not an attempt at reducing or abolishing the traditional functions of the Emirs, Chiefs and Obas. They will remain, although their functions were changed to accord with the present day circumstances.

Generally, the important aspects of the local government reforms of 1976 include the followings:

"(a) For the first time there is a system of local government in which all powers are delegated by the state to a single authority in each administrative area. These local governments are autonomous and are only responsible to the State government in respect of functions they perform;

(b) Instead of Resident, there is now a local government Secretary who is responsible to the local government in the discharge of his duties;

(c) The reform recognized certain functions as purely local in character and therefore require local attention. State government encouraged by the federal government are to allow local governments free hand to deal with such matters;

(d) Local government staff now enjoy the same salary structure and conditions as enjoyed by civil servants. It is hoped that this will attract talented and much qualified individuals to seek career in the local government service;

(e) New sources of revenue have been granted to local government while old ones have been consolidated and expanded.

(f) By the reform, a distinction was drawn between policy making and policy implementation. In the past, administrative councillors, particularly in the North, had powers to make and implement policies. But under the new arrangement, the power to make policy is delegated to a council, the majority of whose members are popularly elected, while the power to implement such policy is vested in the Secretary to the Local Government.

Therefore, the most enduring gains of the 1976 local government reforms in the country is the restoration of its long eroded autonomy as a third tier of government within the prismatic framework of the federal arrangement.

Apparently informed by its proximity to the grassroots and which makes its impact more directly felt by the majority of our rural folks, the Guidelines further injected the "life-line" of direct funding from the Federal accounts to local governments. The present Military regime has implemented this in 1988 budget. It was expected that the local governments will play appreciable role as veritable agents of modernisation and a propelling force for rural transformation.[26]

2.5. BRIEF ANALYSIS OF WORKING OF LOCAL GOVERNMENT IN OTHER STATES CASES FROM THE UNITED KINGDOM, FRANCE AND UNITED STATES OF AMERICA.

The examination of the workings of local government in United Kingdom, France and the United States of America is to provide a comparative perspective to this research. The United Kingdom is choosen as a reference inview of the colonial relation that existed between Nigeria and United Kingdom and because many authors say that the Nigerian local government system is informed by the British or Anglo-Saxon model. Local government in France operates exactly opposite to what is obtainable in Nigeria; while the workings of local government in the United States of America was choosen to give a detailed

2.6. LOCAL GOVERNMENT IN BRITAIN

In Britain, no local government is completely autonomous. All of them are dependent upon the central government for the conferment of powers. Parliament settles what functions each local authority shall have. In the same way, these powers may be added or withdrawn. Secondly, each local authority is subject to certain external controls such as periodic elections and the central governments interest in and influence over the manner in which its functions are carried out. This is moreso in such areas as service rendered by local authorities that are essential to the welfare of the country. For these reasons, the central government must retain a certain interest in the activities of local authorities.

The local government Act of 1972 divides the whole of Britain (outside London) into administrative counties and districts. All districts are of the same single kind, although some may be given the special name and status of "Borough" by Royal charter issued under the Act. Those parts of districts that were under the Act of 1933, "rural districts," are further sub-divided into parishes. Each of these local government areas has a governing body known as a council and each council has been entrusted by Parliament with some or many local government functions to be exercised in its area. [27] The parish was originally the smallest unit of church organisation. For the common people, it became the most important local unit of government as it has the greatest effect on their lives. [28]

Local government within the area administered by the Greater London Council is different from that applicable to the rest of the country in two respects. Firstly, the local authorities .

in the area are themselves differently organised, and secondly, some of the local government laws applicable to "Inner London" is contained in a separate series of statutes. The "Greater London" area is very much greater than the area formerly administered by the London Council, as "London Government" was extended into the Home Counties by the London Government Act, 1963 which came fully into force on April 1, 1965.

Therefore, within London, Local government is organised as a two tier structure, consisting of the Greater London Council on the one hand and on the other, 32 London Boroughs, the city of London, the Middle Temple and the "Lower Temple".

Policy decisions made by local government councils are normally administered by various local government officials and employees, namely the Town Clerk, County Clerk, (who is the secretary to the Local Government). Local governments are statutorily obliged to appoint a clerk, treasurer and heads of some specified departments, but this requirement varies with the type of authority. Local government officials cannot stand elections, so also ex-councillors and members of council cannot become council employees except after twelve months of their retirement. Officials are expected to be politically non-partisan in their attitude in the same tradition of a permanent and rental service.

In financial aspects, local government derive or generate 60% revenue from property estates taxes and rates while 40% came from London as grants. [29]

Local authorities perform many functions. They provide a comprehensive range of environmental protective and personal services which are essential to community life. Although the main functions of each type of local authority will be laid down in public general Acts, the powers of local authorities of same category need not be uniform. Special powers may be conferred by private local Acts, others may be contained in charters, while certain local authorities may decide to exercise powers conferred

by "Adoptive Acts". Under section 274 of the Local Act, 1933, any functions may be delegated except the following :-

(a) One for which the country must itself appoint a committee, or

(b) the powers to borrow money or issue a precept for the levy of a rate.

Thus, in Britain, the functions of local government can be broadly divided into two main groups:

(1) Functions of control over the activities of private citizens, and

(2) the provision of public services.

the first main group-functions of control is the power to make bye-laws. County councils and borough councils may make bye-laws for good government. Those councils which manage public property such as a park, a public library, a swimming bath or a mortuary, may make bye-laws to regulate the management of those places.

The second main group of functions of local government, is not strictly governmental functions that is, in so far as government is to be regarded as the regulation of the conduct of private citizens. All the functions of each local authority are exercisable only in relation to the area of that authority.

There are a few cases in which a local authority may exercise functions outside its own area by providing, for example, a housing estate, or a sewage disposal works, outside the area but for the most part, a local authority may exercise its functions only within the area. These functions must, however, in some ways be related to the needs of the area.

In summary, local authorities are given full discretion to exercise the functions allocated to them. This does not mean that they are completely self-governing. They are established by and subject to the government. According to Pollard:

> "Local authorities in Britain are not emanations of the state but are responsible bodies, competent to discharge their own functions and although they may be statutory body through which government policy is given effect and may operate to a large extent with government money, they exercise their responsibility in their own right, not ordinarily as agents of the governments' departments." 30

2.7. LOCAL GOVERNMENT IN FRANCE

In France, the government exercises much closer control over local affairs than in either Britain or United States of America. The principle of local authority in France and Europe vary between the concepts of concentration and deconcentration. Concentration implies that the divisional process is concentrated at the capital. Deconcentration as a concept, strives to diminish the excesses and inconveniences of concentration. It consists of reposing in local representatives of the state decisional powers reserved for the central authority.

In the administrative structure of local governments in France, the commune is the lowest unit of government. The whole of France is divided into 38,000 communes to make sure local uniformity is ensured. The commune has a deliberative body elected by direct universal suffrage (i.e. the Municipal Council) and the executive arm (the Mayor) himself elected by the Municipal Council.

The concept of a department and its prefect is one of those French administrative creations. The prefect is the representative of the State. Traditionally he is the head of the Department and legal adviser of the Mayors and Municipal Councils in the communes. The council of the

departments (council general) is elected by universal suffrage for a period of six years, half the councillors retiring every three years. Politics plays a large part in French local governments. The structure of French politics is such that national politics are often geared to attitudes which have their roots at local government.

However, the 1982 reforms which came into operation as a result of a 'socialist government' regarded "decentralization as a cornerstone of local government administration. Briefly what this reform has done is to water down the power of the prefect and enhance the power of council and the Mayor. Secondly, it transferred to local authorities rights hitherto enjoyed by the central government and exercised by its national regional or department representatives. Some of these newly devolved or decentralized rights include:

(a) Rights and liberties of communes, departments and regional Act of March 2, 1982.

(b) Abolition of a prefect's veto power on measures adopted by local assemblies was reduced to advisory role. However, local government activities must be overseen by the State inspite of the above concessions.

The organisation of local government in the city of Paris is somewhat different from that in other communes. This is partly due to the size of the capital, which is nearly four times larger than any other city. Power is divided between a Municipal Council, elected by proportional representation from six electoral districts and two executives appointed by the government. These two executives are the Prefect of the seine (who, significantly, has his office in the town hall of Paris) and the Prefect of Police.

Taxes are the main sources of local government internal revenue in France. They are broadly divided into two:-

(a) Obligatory and optional taxes,

(b) Those levied directly for the benefit of the municipalities and taxes levied by higher authorities who transfer the revenue so obtained to the area of collection.

Obligatory taxes can both be direct and indirect. Direct taxes include local road tax, dog tax, mines tax and visitors tax. Indirect taxes include additional taxes on licence of wine and spirit shops etc. Optional taxes include among others tax on net revenues from both built-up and non built-up property, rental value of business premises and luxury items. Other local sources of revenue are profits and income from local government enterprises. Grants from higher authorities also supplement local governments own sources of revenue. [31]

2.8. LOCAL GOVERNMENT IN UNITED STATES OF AMERICA

In the United States of America, the local government pattern is discarded from the 18th Century English system. It is however, much more varied from one part of the nation to another than is the case in Britain. The executive function may be centralized or decentralized, and the selection of personnel may be based upon patronage or a merit system. The former predominates at the state and county levels, and the latter in middle size and large cities and metropolitan counties.

The basic American government structure is divided into 3 - the federal government, the states and the local governments. According to Professor William Anderson,"

> "a unit of local government in the United States can be defined as one which has a defined area and resident population, a separate and continuing

> governmental organisation of its own, the legal power to raise revenues and some element of autonomy are usually of popular participation in the handling of local affairs.[32]

Local governments in the United States are governed by laws of the States and not those of the national government. Therefore no national pattern of local government exists. The law and practice of local government varies from State to State.[33] State governments have desired legal control over the countries which operate as agencies of the State to enforce state laws. Nevertheless, these local units are powerful because they enjoy enormous powers by way of legal competence, enormous financial resources (especially in cities) and their democratic base.

Local governments are also divided into counties and cities. With its political sub-divisions, the county is geographically the most universal jurisdiction of local government in the United States. The county with sub-districts and townships, serves as a base for bringing people and government together in such essential matters as maintaining law and order, providing schools and roads etc. The county constitutes the locale of identification for many Americans of rural residence or background. Counties have created or expanded agencies to distribute funds under state and federal programmes, as for example, in the field of welfare. Many populous counties have separate officials or establishments for specialized functions, which may be within the province of the central governing body in the smaller counties. Every city of substantial size, has an organisation of agencies or departments, more or less responsible to a central authority of Mayor, Manager, Commission or Council. The heads of the different departments as well as the member of boards and agencies may be elected by the voters or by the council, or they may be appointed by the chief executive.

There are four major towns of executive in the American local government system namely: the strong Mayor council, the weak Mayor council, the commission plan and the city manager. The strong Mayor council is the most popular form of American Municipal Government. They Mayor is elected by the people so also members of the council. The Mayor's source of local authorities finance is tax and more especially property taxes. Others are general sales and group receipts and individual income taxes. In 1953, only 25-26% of total local government revenue came in from grants, meaning that local government on the average raised over 70% of their revenue internally (43% of which came from property taxes).[34] Local Governments are politically potent. Their powers are backed up by their corporate nature or existence, their democratic structure, their financial position and the quality of the personnel.

Generally, most of the activities of local government in United States of America can be classified into 3 main groups namely:-

(a) Health and safety functions

(b) Welfare functions

(c) House-keeping functions, e.g. official records of births, death, marriages and property transfers and assessments.

From the legal perspective, initially the earlier state legislatures especially after the revolution could legislate for local units (which itself was vested in the Governor before then). Charters used to be granted by special Acts of the

legislatures but today only a few states continue with this practice. Due to protest, the legislatures have now desisted from legislating for individual local unit in some local governments and instead has to pass laws that apply to all counties, cities or a group of them.

Judicial review is a basic feature of American local government system. All local governments must act "intra Vires i.e all local units must stay within the bounds of national and state laws both as the substantive powers and to procedure. Judicially administered remedies such as writ of mandamus, prohibition, quo warrants, ceitiorari, civil liability for damages, declaratory judgements, injunctions and even criminal liabilities are applied in the judicial control of local units.[35]

FOOTNOTES TO CHAPTER II

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CHAPTER III

INTER-GOVERNMENT RELATIONS IN NIGERIA

According to the proposals for the reorganisation of local government council in Nigeria, "many local authorities are too small in size and revenue, and in consequence too short of highly qualified man power and technical equipment, to be able to do their work as well as it could and should be done ..... The conventional tendency for those concerned primarily with its representative purpose is to stress the value and need for small local governments - ones sufficiently small to satisfy local aspirations, to provide the individual citizen the maximum sense of identity with, accessibility to and participation in his government. In contrast, the tendency for those more concerned with the administrative purpose is to emphasise the value and need for large local governments".

3.1 FUNCTIONS OF THE MINISTRY FOR LOCAL GOVERNMENT

The Ministry of local government [redacted] expected to play the leading role in determining functions of local governments and in doing so, should establish close cooperation with all the other government Ministries who are concerned with local government functions. The main aims of the Ministry should be to establish and maintain a comprehensive functional role for local government and to endeavour to ensure that they have available adequate staff and finance to enable them to discharge the functions for which they have been made responsible. The Ministry should seek to promote in all possible ways the ability of local governments to carry out their functions. The desirability of local functions being carried out by local representative agencies should constantly be stressed by the Ministry who should defend local governments against unreasonable and ill-informed criticisms concerning the discharge of their functions. The Ministry also endeavoured to ensure that the state government initiates regular reviews, say at four to five yearly intervals, of the functions and finances of local

governments. [36]

In addition, the role of Ministry for Local Government include providing secretariat and facilities to local government sevice board, promoting and encouraging local governments development plans.

The Ministry is thus the agency set up by the State Government under the relevant sections of the Edict to supervise, co-ordinate and monitor the ways in which the resources of the local governments are used to attain the set objectives. Along these directives, the Ministry performed the following functions:-

(i) "Ensuring that the local governments perform effectively functions/powers confirmed upon them by the relevant sections of the local government law;

(ii) Obtaining a satisfactory role and an adequate range of responsibilities for the local government;

(iii) Laying down the terms and conditions of service for local government staff so as to ensure that these are directly equated to those of the state civil service;

(iv) Ensuring that the local governments not only have adequate but qualified staff to discharge the functions and provide the services required of them;

(v) Promoting local government training schemes at various levels for administrative, financial, professional and technical staff;

(vi) Seeing that the financial resources including taxes, government grants and other revenues available to the local governments are sufficient enough to enable them to provide adequate standard of services.

(vii) Maintaining holding posts from which state government officers can be seconded to the local governments.

(viii) Promoting and encouraging local government plans and co-ordination of the activities of the planning units of the local governments.

(ix) Providing secretariat for the local government pension fund;

(x) payment of all grants to the local governments and providing secretariat for the local government Joint Account Committee.

(xi) Ensuring effective utilization of man-power by development/posting of local government staff on grade level 07 and above under the unified local government service.

(xii) Ensuring the payment of sponsorship of local government staff on in-service taining from training fund and providing secretariat for the fund's Committee; and

(xiii) Ensuring the existence of local government loans Board and providing secretariat for the fund.37

3.2 RELATIONSHIP BETWEEN MINISTRY FOR LOCAL GOVERNMENT AND LOCAL GOVERNMENT COUNCIL.

For the administration of any organization to be effective and meaningful in the general operations of activities, there should be some one to co-ordinate its various activities.

The Ministry of Local Government played an indispensible role in co-ordinating the administrative machinaries and operations among all local government councils within the state. It is important that the Ministry should have a fair view of what obtained regarding the administrative set up among all local government authority organise its own independant administrative operations.

Another major aim for Ministry's involvement in the co-ordination of the administrative structure and activities of its local government bodies is to see that they are in line with the hierachical administrative organization of the state government.

Besides the administrative co-ordination of local government authorities, the Ministry's other major objective was to see that the socio-economic development of all local governments within the state goes at equal rate. This is one of the reasons why the Ministry gave general guidelines to all local government councils when they were to prepare their development plan.

The Ministry for local government also had to ensure that local governments are not to embark on over ambitious projects or plans which would later be a complete failure. It had to see that development plans of local governments were not inconsistent with that of the state and federal government priority projects.

In the over all development strategies, it was the responsibilities of the Ministry for Local Government to ensure that all the local authorities in the state, carry on with such development projects as rural constructions and maintenance, agricultural extension, rural water supply, adult education, health centres etc as these objects are also in the priority lists of both federal and state governments.

The Ministry had the responsibility of ascertaining that local sources of revenue, such as community tax, rates and fees and numerous others, are uniform and concurrent and residual powers given to local governments stipulated by the Federal Government Guidelines on local government reforms in Nigeria were co-ordinated by the Ministry for local government.

Another role of the Ministry was to see that the political set up and organizations of all the local government areas were very much alike in form and structure. [38]

3.3. LOCAL GOVERNMENTS AND LOCAL GOVERNMENT SERVICE BOARD: CO-OPERATION OR CONFLICT

According to Adewumi and Orewa, the chequered history of local governments administration in this country has its foundation on the traditional structure known as the Native Administration system in colonial times. Recruitment into the local government service then was based largely on patronage; that is only persons who were related to or favoured by the traditional ruling elite could enter into the native administration service which was the main recruiting organization for most of the indigenous labour.

The recruitment system was bedevelled by all sorts of political malpractices, even when local government was being democratised. Such malpractices led to the establishment of a local government service board in many states of the Federation including former North Western State. This step was necessary because although the traditional system of local government had been replaced by a democratic one, the already poor image of local government had been worsened as the democratically elected councillors were using the staff for their own selfish and political advantage with the result that only "sons of the soil" could get local government jobs. [39]

The importance of the local government service board was succinctly put by the Oyo delegate to the Third National Conference of the Boards in a paper presented at the Conference.

> "The re-organisation of local councils which was carried out in 1955 did not substantially attract the structure of administration. That year, however, was an important landmark in the history of personnel management in local government. Shortly after the enactment of the 1952 law, the government realized the necessity of attracting and retaining high level manpower in the local government councils

> if the communities were to derive optimum advantage from the services of their staff."

Therefore, in 1955, the Local Government Service Board came into existence for the recruitment of highly qualified staff into the local government service and to ensure that the service was free from the interference of politicians. For the first time, the staff of local government councils were provided with some elements of motivation in their jobs.

The powers of Local Government Service Boards derived partly from the powers of the government that used to approve certain appointment in local government, and partly from the powers of the local governments themselves on staff matters. The result was that the existence of the Local Government service Board was subject to suspicion and lack of effective cooperation by both the Ministry for Local Government that saw itself as loosing powers of control over local government staff to another body and the Local Government Councils that regarded the setting up of the Board as an encroachment on its powers and autonomy

It is pertinent to mention that until the creation of states in 1967, Local Government Service Boards were in existence only in the Southern part of the Country. Subsequently, the Board was established in the North. The law establishing the Board gave them wide powers over appointments, promotions and disciplinary matters.[40]

The general functions of Local Government Service Board have been summarised as follows:

(i) "Local Government Service Board serves mainly as a recruitment agency for each of the local governments within its area of jurisdiction's,

(ii) It handles staff matters for the more highly trained cadres only, leaving the other cadres to be dealt with by the local governments."[41]

It is important to mention that the Local Government Service Board differs in operation from the Public Service Commission (now known as Civil Service Commission) with which it is always compared. Whereas the Public Service Commission is appointed by the Government to cater for a particular service, the local government service board is responsible to the services of various local government units which are independant of each other and have a substantial degree of autonomy in the conduct of their affairs. It is evident that an inherent area of conflict exists between the Local Government Service Board and the local governments, yet for the two institutions to be really effective, they have to co-operate with each other in the performance of their duties. It is hoped that the Ministry for local government that has the responsibility for ensuring that virile, progressive and result - oriented local government exist, will also be concerned about how this goal is achieved through the co-operation of the Local Government Service Board and the Local Governments.

3.4 FUNCTIONS OF LOCAL GOVERNMENT COUNCIL

The main functions of a local government council are as follows:-

(a) the consideration and the making of recommendations to a state commission on economic planning or any similar body on -

  (i) the economic development of the state particularly in so far as the areas of authority of the council and of the state are affected, and

  (ii) proposals made by the said commission or body;

(b) collection of rates, radio and television licences;

(c) establishment and maintenance of cemetries, berial grounds and homes for the destitute or infirm;

(d) licencing of bicycles, trucks (other than mechanically propelled trunks), canoes, wheel barrows, and carts;

(e) establishment, maintenance and regulation of markets, motor parks and public conveniencies;

(f) construction and maintenance of roads, streets, drains and other public highways, parks, open spaces, or such public facilities as maybe prescribed from time to time by the House of Assembly of a state;

(g) naming of wards, and streets and

(h) provision and maintenance of public conveniences and refuse disposal;

(i) registration of all births, deaths and marriages;

(j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a state; and

(k) control and regulation of -

(i) out-door advertising and hoardings,

(ii) movement and keeping of pets of all description,

(iii) shops and kiosks,

(iv) restaurants and other places for sale of food to the public, and

(v) laundries.

2. The functions of a local government council shall include participation of such council in the government of a state in respects of the following matters namely -

(a) the provision and maintenance of primary education;

(b) the development of agriculture and natural resources, other than the exploitation of materials;

(c) the provision and maintenance of health services; and

(d) such other functions as may be conferred on a local government council by the House of Assembly of the state. [42]

Hence, the state government through the House of Assembly may confer additional functions on local government. The danger of having enumerated powers raises the problem of whether a House of Assembly can take away any of the enumerated functions.

According to rules of interpretation stated by Bowen L. J in RE CUNO [43] and adopted in the case of S. L. EKEOCHA V. THE CIVIL SERVICE COMMISSION IMO STATE, [44] that "in the construction of statutes you must not construe the words so as to take away rights which already existed before the statute was passed unless you have plain words which indicate that such was the intention of the legislature, "(per Oputa C.J. High Court, Owerri), it is suggested that the House of Assembly may only add to the functions enumerated and not take away from the list.

Following the above enumerated functions, similar functions have been incorporated in Niger State on Establishment of local government Edict, 1982. [45]

However, subject to the provisions of any instrument establishing a local government council, such a council may delegate to subordinate area authority upon such conditions as it may deem fit, any power conferred under this part or any powers to enforce any bye-laws made by the local government council. [46] Other additional functions conferred on the local government by Niger State House of Assembly include :- power to enter into contract, power to accept gifts, power to build, acquire buildings for the purpose of transacting its business or for public meetings and assemblies, power to make declarations and to recommend modifications of customary law of its area of authority [47] etc.

FOOT-NOTES TO CHAPTER III

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38. A. Y. Aliyu and P. H. Khochi; Local Autonomy and Inter government Relations in Nigeria. Gaskiya Corp. Ltd, Zaria.

39. L. Adamolekun and L. Rowland: The Law Local Government system in Nigeria: Problems and prospects for Implementation. 1979, Ile-Ife University of Ife Press.

40. IBID

41. IBID

42. 4th Schedule of the 1979 Constitution.

43. (1989) 43 ch. D. 12, 19.

44. (1981) 1 N.C.L.R. 154 x 164.

45. S. 60 and S. 61 of Local Government Edict, 1982, Niger State.

46. S. 62, Local Government Edict, 2982, Niger State.

47. S. 63 - S. 68 of the Local Government Edict, 1982, Niger State.

CHAPTER IV

4.1 CONSTITUTIONAL BASIS OF LOCAL GOVERNMENT

Section 2 of the 1963 Constitution provided that: "Nigeria shall be a Federation comprising Regions and Federal territory, and shall be a Republic by the name of the Federal Republic of Nigeria." [48]

Elaborating on the territories that would make up the nation, it went further to state that: "There shall be four Regions, that is to say, Northern Nigeria, Eastern Nigeria, Western Nigeria and Mid-West Nigeria". [49]

It is observed that nowhere in the constitution was provision made for the legal corporate existence of Local Governments. By implication, the responsibility of local government affairs was that of the Regional Governments. In like manner, the various Regional constitutions also made no provisions for local government councils. Aspects of decentralization of governmental activity provided for were only in relation to the establishment of Provincial Administrations. The Constitution of Northern Nigeria for example, provided that: "The Governor may by instrument in writing establish for any province of the Region a Provincial Administration. A provincial Administration established under this section shall have such functions as may be prescribed by the government ....." [50] Exactly the same provisions were made under the constitutions of the Eastern, Western and Mid-Western Regions. [51] That local government councils had no constitutional provision shows further that they were not recognized as constituting separate governmental level. As a result, their role in the development process has been insignificant. Infact, the observation has been made that "they did not receive even a mention" in the Second National Development Plan. [52]

Hence, the first republican constitution witnessed a system of straight forward relationships between the regional governments. The predecessors of the state governments and their local authorities based on superior-subordinate relationships. The Federal authority then had nothing even remotely to do with local government.

The legal provisions for the establishment of local governments throughout the country were such that rendered local government not only subordinate but also impotent; with the result that the local authorities were forced to dance to the tune of their governments and masters. For example, on a very flimsy excuse or for political reasons, any local government council could be dissolved at will by the government with or without recourse to any tribunal of inquiry. Because of fear of dissolution or political victimisation, the institution of local government became unstable and unhealthy; and sometimes incapacitated. By 1975, the federal government involvement was limited to financial grants to local government.

Hence the Constitution Drafting Committee was faced with the novel demand that local government should be entrenched in the 1979 Constitution of the Federal Republic of Nigeria as a Third tier of government. The aim of such provision in the constitution in the words of the sub-committee of the Constitution Drafting Commitee, was to stop the state governments from "cavalierly and whimsically tinkering with local government organs". [53] There had been too many cases of elected local government councils being capriciously dissolved and replaced by appointed agents of the state government, committees, management boards or sole administrators.

There had also been neglect and denial of funds for conveying out the functions assigned to local government. In the result, local government had been reduced to tools in the hands of the state government to be used and manipulated as its volumes dictated. It was in this light that

thought was given in 1976 to the idea of guaranteeing the statutory nature of this third level of government by embodying it in the 1979 Constitution.[54]

In accordance with the spirit of the 1976 Reform, the constitution of 1979 gave legal recognition to the existence of local governments. It provided that:

S7 (1) "The system of local government by democratically elected local government councils is under this constitution guaranteed; and accordingly, the government of every state shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.

(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, and

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

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

(ii) traditional association of the community, and

(iii) administrative convenience.

(3) It shall be the duty of local government council within the state to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a Law enacted by the House of Assembly of the state.

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

elected local government councils could be established, management committees were established by law to conduct the affairs of local government in Lagos State, and the State Governor was authorised to appoint their members, the law was held in the case of ADENIJI ADELE AND OTHERS V. GOVERNOR OF LAGOS STATE AND OTHERS [56] to contravene the constitutional guarantee and was accordingly declared void. So also in the case of THE GOVERNOR OF KADUNA STATE V. THE HOUSE OF ASSEMBLY OF KADUNA STATE, [57] it was held obiter. that the whole concept of appointing Sole Administrators, Caretaker Committee to replace democratically elected local government councillors is a direct violation of the provisions of section 7 (1) of the 1979 Constitution.

The power of a State Government in respect of local government is limited by the Constitutional guarantee of local government by a specific duty imposed on every state government to ensure by law the existence of such councils, and that the franchise for elections to them is the same as for elections to the State House of Assembly as stated in s. 7 (1) and S. 7 (4) of the 1979 Constitution. In BALOGUN V. ATTORNEY GENERAL FOR LAGOS STATE, [58] the Local Government Law 1980 which gave blanket power to establish, create or constitute new local government councils or redefine the area of authority of the existing local government councils in Lagos State, was held as ultra-vires the legislature, as the State House of Assembly could not delegate this legislative power to the Governor. Accordingly, the court issued an interlocutory injunction to restrain the defendants, their servants and agents from establishing, creating or constituting new local government councils and the area of authority of such councils in Lagos State and from holding elections thereto under the said law. Similarly, when the Lagos State Government wanted to hold elections to Local Government in 1980 by using a Register of voters prepared by the Electoral Commission for the national election in 1979, the plaintiff challenged the

(5) The functions to be conferred by law upon local government councils shall include those set out in the Fourth Schedule to this constitution.

(6) Subject to the provisions of this constitution -

(a) the National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federation; and

(b) the House of Assembly of a state shall make provisions for statutory allocation of public revenue to local government councils within the state". [55]

The above provision gave the local governments a place in the constitution and so attracted statutory grant separate from those of the states; a significant level of awareness is now being reached as to the importance of local governments in the socio-economic and political development of Nigeria. Essentially, they (local governments) will be in a position to constitute in minimising the congestion of responsibility in the state capital thereby enabling state agencies to concentrate on all embrasing development measures.

The same provision also 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 it through local government as it pleases; it is bound to conduct it through local government councils democratically elected under a Law that provides for their establishment, structure, etc. The concern is to ensure that a state government will not abuse its power, and 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. Thus, where, pending such time as democratically

holding of elections in CHIEF GABRIEL A. AKANRO V. LAGOS STATE ELECTORAL COMMISSION [59] on the ground that, the Register, if used, would leave many voters who became entitled to vote after 1979 without the right to vote. Secondly, according to the Constitution, a Register of voters is required to be prepared by the Federal Electoral Commission [60] and then and only then elections into the Local Government, could be held. Balogun J. accepted these arguments and held:

> "At the time the said Register of voters was prepared it was made clear to the electorate that it would not be used for Local Government Elections. I do not think that there can be a system of local government by democratically elected Local Government Councils under any enactment which does not make it possible for the electorate to know at the time a Register of voters is being prepared that the Register of voters will be used for Local Government Elections. Nor do I think that there could be a system of Local Government Councils if a Register of voters prepared for a separate purpose and expressed at the time it was prepared as a Register of voters not to be used for any Local Government elections is to be imposed on the used for any Local Government Elections." [61]

Thus the defendants were restrained from organising and undertaking or holding any elections into the State Local Government Councils as planned. The same view was taken by the court in ALHAJI CHIEF AKANBI LAWAL V. THE LAGOS STATE ELECTORAL COMMISSION. [62] Balogun J. emphasised that:

> "I do not think that there can be a system of Local Government by democratically elected local government councils (which is guaranteed under the Constitution) if the electorates are informed at the time a Register of Voters is being prepared, that the Register would not be used for Local Government Election, but after the register had been compiled, it is to be turned into a use for which it was not compiled. I cannot find anywords in the constitution which compel me to hold otherwise than I have now held". [63]

For most state governments, however, extending the life of the existing councils was not an acceptable alternative for the obvious reasons, among others, that some of their members, including in some

cases, the chairmen and some supervisory councillors, belonged to different political parties. The councils had therefore to be suspended or dissolved, in some cases the normal expiration of their life. The suspensions or dissolutions were affected in some states by a law made by the State House of Assembly as in the case of AKAN V. ATTORNEY GENERAL, CROSS RIVERS STATE, [64] and in others by the governor persuant to powers conferred by law but without in many cases complying with the conditions stipulated in the enabling statute for the exercise of the power. On the basis that the existing councils had not been democratically elected in the sense in which that term is used in the constitution, their suspension or dissolution by the Governor was also said to be within his power, as the "appropriate authority" under S. 274 of the Constitution, to make changes in the text of existing laws in order to bring them into conformity with the constitution as held in JIDEONWO AND OTHERS V. GOVERNOR BENDEL STATE AND OTHERS. [65]

It was further held that it is in conflict with Section 7 of the constitution which guarantees a system of democratically elected local government for a Governor to nominate and appoint members of management committee having dissolved or suspended democratically elected local government councils without regard to the provisions of the relevant local government law particularly if such provisions prescribe certain pre-conditions for such dissolution or suspension.

The question as to whether a Governor of a State can set up inquiry into the affairs of local government without consultation with Executive was raised in the case of LAWAL KAGOMA V. THE GOVERNOR OF KADUNA STATE AND 2 OTHERS. [66] The Governor appointed a commission of inquiry into the affairs of Kaduna Local Government Council. He purported to act by virtue of the powers conferred upon him in Section 2 of the Commissions of Inquiry Law Cap 25 Laws of Kaduna State and Section 98 of the Local Government Edict, No. 1 of 1977. The power of the Governor was challenged

on the ground that the inquiry into the affairs of the local government could locally be made by the Executive Council and not the Governor under section 98 of the Local Government Law, 1977 and the provisions of that law over ride those of Section 2 of the Commission of Inquiry Law Cap. 25 of laws of Kaduna State.

Section 98 (2) states:

> "Subject to the other provisions of this subsection, the Executive Council may appoint in writing any person to conduct an inquiry and any person so appointed shall cause a notice of the time and place of the inquiry to be given to the local government and persons appearing to him to be interested, and notwithstanding the provisions of the Commissions of Inquiry Law, every inquiry requiring to be held under this part shall:-
>
> (a) where such inquiry is to be conducted by one person, be conducted by High Court Judge or other judge of not less than equivalent rank; and
>
> (b) where such inquiry is to be conducted by two or more persons it shall be headed by High Court Judge or other Judge of not less than equivalent rank.

Section 2 of the Commission of Inquiry Law Cap. 25 states that:-

> "The Governor may, wherever he shall deem it desirable, issue a commission appointing one or more Commissioners, and authorising such Commissioners, or any quorum of them therein mentioned, to hold a Commission of Inquiry into the conduct of any officer in the public service of Northern Nigeria".

It was held that the only authority to act as prescribed in Section 98 of the Local Government Law is the Executive Council and not the Governor. It was further held that the Executive Council mentioned in Section 98 of the Local Government Law is the Executive Council which the Governor is obliged to set up under Section 171 (5) of the Constitution and since no Executive Council has been set up in Kaduna State because there were no Commissioners, the Governor had no power to institute inquiry into Local Government Council without putting the matter before

the members of the Executive Council. Similar view was held in the case of CHIEF S. E. OTERI AND 6 OTHERS V. CHIEF J. O. AWHINAWHI AND ANOTHER. [67]

4.2 CREATION OF LOCAL GOVERNMENTS:

The 1979 Constitution states that:

> "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; and
>
> (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." [68]

The above section presupposes that more local governments can be created. The area over which a local government council may exercise authority has to be "prescribed" by "a person authorised by law". It is reasonable to presume that the person is the Chief Executive of a State who will be authorised to do so by a law passed by the State House of Assembly.

On the other hand, section 3 (1) of the 1979 Constitution states that:-

> "There shall be 19 States in Nigeria, that is to say, Anambra, Bauchi, Bendel, Borno, Cross River, Gongola, Imo, Kaduna, Kano, Kwara, Lagos, Niger, Ogun, Ondo , Oyo, Plateau, Rivers and Sokoto; and S. 3 (2) went further to state that "Each state of Nigeria named in the first column of Part I of the First Schedule to the constitution shown opposite thereto in the Second column of that Schedule."

There are two schools of thought as to whether or not a State Government is competent to create more local governments. The school of though which argued that the state government can create more local governments contended that section 3 and Schedule 1 deal with "States" and not "Local Governments". Whereas the constitution very clearly states that there shall be 19 States in Nigeria, there is no mention at all of the number of local governments that may exist in any one state of the Federation. Schedule I of the 1979 Constitution obviously lays stress on the "States" and NOT "Local governments". The areas mentioned which correspond to existing local governments are coincidental and merely descriptive of the boundary between one state and another, the emphasis being on "states" rather than "local governments." Hence the delition of the words "local government" in section 3 of the 1979 Constitution.

The effect of that section raises the question of a possible conflict between the exercise of the power of the state to establish an area and the fact that the constitution has fixed the area for each state and has conferred on the state Electoral Commission the power to divide a local government council into wards for purpose of local government elections. In CHIEF S. A BALOGUN V. ATTORNEY-GENERAL OF LAGOS STATE[69], Counsel for the plaintiff had argued that section 3(2) of the constitution prescribed the area of each state which is coterminous with the local government areas in the state and that a House of Assembly of a state cannot exercise any of the powers vested in it under section 7 to create new local government councils or prescribe new areas over which a local government council may exercise authority unless and until the state government has arranged with the other governments in the Federation for a constitutional amendment to section 3(2) in a way to reflect the proposed new local government councils.

On the other hand, the defendant's counsel argued that the geographical area of each state of the 19 states there is no room to qualify the word "area" in that subsection by the words "local government." The contention raised by the defendant was accepted by the Court. Balogun J. said:

> "It occurs to me that subsection (2) does no more than define the area of each state in the Federation and does not prescribe the local government councils which must exist in each state for any period of time until the first schedule to the constitution is amended, because section 3 does not deal with any other subject than the number of states in the federation, the area of each state and the federal capital ....."

Thus, the areas designated in schedule I of the constitution which make up the present Niger State for example, Suleja, Agaie, Lapai, Chanchaga, Gbako, Lavun, Mariga, Magama and Rafi. It is therefore possible on the basis of the provision in section 7 of the Constitution for the state Government to create more local governments since the constitution requires them to ensure by means of a law the existance of democratically elected local government councils. It was in the light of above that by 1981, the already existing 301 local governments gradually rose to a staggering number of well over 700.

The other school of thought claimed that no state Government is legally competent to increase or decrease the number of "areas" (which correspond to existing "local government units") which comprise the state since such an action is tantamount to an amendment of the constitution - an action which no State Government is competent to do. The areas specifically mentioned in schedule one of the constitution as comprising the present Niger State, for example, cannot be increased or decreased since doing so amounts to changing a part of the constitution which is beyond the legal competance of any State Government.[70] It is submitted that this school of thought erroneously assumed that the names

enumerated under "AREA" are the names of local governments. There are no clear records in the constitution to assume that "local government areas" are intended by the word "area". The two terms are different and therefore cannot be used interchangeably. Thus in the case of CHIEF OBAFEMI AWOLOWO VS. ALHAJI SHEHU SHAGARI[71] over the declaration of the latter by the Federal Electoral Commission as being duly elected as the first Executive President of Nigeria in 1979, Supreme Court had this to say:

> "It is relevant, we think, to pointout that anybody called upon to interpret any kind of statute should not, for any reason, attach to its statutory provission a meaning which the words of the statute cannot reasonably bear. The duty of the Court is to interpret the words that the legislature has used. Those words may be ambigous, but, even if they are, the power and duty of the Court to travel outside them as a voyage of discovery are strictly limited"[72]

Thus, nothing stops the makers of the constitution from discussing the constituent units of each state as "local governments" instead of "areas" if they had intended to use the former for they were aware of their existence. To replace "AREA" with "LOCAL GOVERNMENT" amounts to 'voyage of discovery", it is to read extraneous meaning into the constitutional provision.

Other factors stated by those who advocated that states lacked the power to create new local government include the followings:-

(a) "that the expression" the person authorised by law to prescribe the area over which a local government council may exercise authority as contained in the constitution was ambiguous not specifying whether it was the Governor, the State Government or Federal Government;

(b) that the constitution requires that in order for a candidate for the office of Governor to be validly elected, he should have not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the local governments in the State, in addition to other qualifications; this, it is suggested, makes the number of local government councils a Constitutional issue; and

(c) that the constitution, in providing for the statutory allocation of revenue to the local government councils from the Federation Account to be distributed to the states for the benefit of their local governments on such terms and in such manner as may be prescribed by the National Assembly, made the number of local governments a constitutional issue.73

Item 31 of the Exclusive legislative list specifically denies the power to incorporate, regulate and wind up local government councils and by virtue of section 476 (a) of the Constitution, the residuary power lies with the state and consequantly the power to create new local government councils must lie with the States. It stands to reason that the local governments being a local matter of the States, the Federal Government would not have sufficient knowledge as to what local governments are to be created. On the contrary, it is the state which must have power in this behalf. When a state creates some new local governments, it can do so only out of the existing local government areas and thus the area of a State would remain the same. Therefore, the First Schedule to the constitution is not affected at all when new local governments are created within a State. In other words, creation of local government areas does not imply any change in the boundaries of a State; the boundaries of a State remain unchanged.

It is submitted therefore that if State Governments have no constitutional power to create local governments, then the whole provisions of section 7 is superfluous, as the controversy is settled in the case of USMAN MOHAMMED V. ATTORNEY-GENERAL OF KADUNA STATE[74] that states can create local government areas.

It was in the light of section 7 (1) of the 1979 Constitution that the Niger State Government created local government areas under a law[75]. Similarly other states of the federation enacted their own laws in conformity with the constitutional provisions.

4.3 CRITERIA FOR CREATING LOCAL GOVERNMENTS:-

A state government cannot create local government arbitrarily it must follow the constitutional provision strictly. A section of the 1979 constitution states 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 and ;

(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".[76]

Some of the main reasons for the increasing demand by the various communities in Nigeria to get their areas constituted into local government units include the desire for accelerated social and economic development, social justice, even development and the desire to redress the imbalance in the distribution of amenities among the various communities. The criteria that need to be considered in creating local governments include the following - population (80,000 - 150,000), historical background, social and cultural affinity or homogeneity, economic viability and the predilection of the Central State Government. The last of these criteria is sometimes determined by political considerations without due regard to economic viability. What is an economically viable and sound proposition may not necessarily be politically expedient and vice versa. But how may the viability of political unit be determined? According to P.E. James, "Viability is a measure of the effectiveness with which a state can be administered to fulfill the purpose for which it was created."[77]

Under the principle of "Community of interest" or "community consciousness" areas that should be grouped together to form a Local Government should possess, to a reasonable degree, a combination of common historical, geographical, sociological, cultural and economic characteristics and should be reasonably large both in size and population. The exact weight that should be attached to each of these factors will be greatly influenced by the sort of functions the Local Government is expected to perform. For example, if the factor of cultural homogenity is the dominant creterium used to determine the areas that should constitute a local government authority, we are most likely to have one of the two opposite extremes either a very large and unwieldly local government body or a very small and unviable one. Under the English system, the followings are factors considered in creating local government units:

(a) community of interest;

(b) development, or anticipated development,

(c) economic and industrial characteristics,

(d) financial resources measured in relation to financial need,

(e) physical features including suitable boundaries, means of communication and accessibility to administrative centres and centres of business and social life,

(f) population size, distribution and characteristics,

(g) record of administration by the local authorities concerned,

(k) size and shape of areas and

(i) wishes of the inhabitants.

The possession of a common historical origin, language and experiences as well as the same socio - cultural milieu helps in no small measure to bind people together and conversely marked differences in same can keep people further and further apart.

Secondly, a local government must be big enough in size to command the resources and skilled manpower it needs to provide services with the highest degree of efficiency. But it must not be so large as to make it impossible for the council members to keep in touch with the people affected by their policies.

Thirdly, the headquarters of a local government must be accessible to every part of the local governmnet unit being the centre of business and social life of the areas.

Another principle taken into consideration apart from size, administrative convenience and so on, is the fact that areas being constituted into a local government must have a reasonably sufficient financial base. This is very important because a local government being a political sub-division of a State Government, and constituted by law should have a substantial control over the affairs in its area of jurisdiction including the right to impose taxes. A situation whereby a local government authority is almost totally dependent upon grants from the Federal Governmnet is not enviable and cannot lead to the emergence of a strong, meaningful, effective and responsible local government, capable of performing its duties in its own right.

It is submitted that an effective, meaningful and responsible local government must fulfill the following conditions:-

(a) it must be able to discharge a wide range of profoundly important functions which concern the health and vitality of the general well-being of the people in its area of jurisdiction;

(b) it must be able to attract and sustain the interests of those resident within its area of authority;

(c) it should possess and be able to continue to develop enough inherent strength to deal with the State Government in a valid partnership in the task of social, economic and political development and modernisation and enhancement of the well - being of the people which is their joint and indivisible responsibility; and

(d) it should be capable of rapidly adjusting and adapting itself continuously to the changes going on in the daily lives of the people and to the pressing demands for more and better services.

If the foregoing criteria are duly considered in creating Local Governments, then the probability is high that these units of government at the grassroot will be able to deal flexibly and grapple effectively with the present and future politics - socio-economic problems of a growing and dynamic society. In practice, these criteria may not be applicable.

4.4 LEGAL STATUS OF LOCAL GOVERNMENT

(corporate personality)

Local Governments both in Nigeria as in Britain and other countries have legal personalities. They consist of members called the Chairman and councillors, and by the corporate status conferred on them by statutes, the collective group of individual members comprising the councils becomes a body or legal persons with perpetual succession and a common seal, having rights and duties, capable of acquiring lands, engage in contracts, sueing and being sued.

The word 'corporation' according to Cross, C.A., is defined thus:

> "A collection of many individuals, united into one body under a special demonination, having perpetual succession under an artificial form, and vested, by a policy of the law, with the capacity of acting, in several respects, as an individual, particularly of taking and granting property, of contracting, obligations, of suing and being sued."[78]

He further explained it by stating that this collection of individuals by corporation becomes just an individual, an artificial person having rights and duties ..... A corporation is therefore wholly different and a separate entity from the individuals who

compose it. It is the corporation as such and not its constituent members, which is liable for its obligations and in whom its property rests.

Once formed, a change in the numerical strength of the councillors cannot affect their legal status unless the instruments creating them have been revoked. Members of the council can be surcharged in proper case and for offences proved, while the council themselves can be vicariously liable if and when the acts of the members are done in good faith and in official capacity.

In Nigeria, the powers that constitute local governments corporate personalities are contained in the instruments, laws or edicts of each particular state dealing with local governments, for example, the Niger State Local Government Edict, 1982 state that: "Every Local Government shall be a body corporate by the name designated in the law establishing it and shall have perpetual succession and a common seal and may sue and be sued in corporate name". In the case of WILLIAM ESOM AND OTHERS V. OJI LOCAL GOVERNMENT COUNCIL AND ANOR,[79] it was held that a local government council can sue and be sued as persons exercising the power and authority of a local government council. Similarly in the case of G.O.K. AJAYI V. LAGOS CITY COUNCIL,[80] the Supreme Court of Nigeria held that the Lagos City Council is a statutory corporation and as such is a separate entity from its employees and is constituted of members none of whom are the Heads of Departments and none of whom did the plaintiff represent.

Since local governments can enter into contracts,[81] such contracts must be made in compliance with the statutory provisions and in accordance with the standing order. In the case of GEORGE ANYAGBORUF V. AKUBGE DISTRICT COUNCIL,[82] it was held that

the contract entered by the council was legal and the plaintiff was entitled to his claim.

However, a council may not necessarily comply with the required procedure meant for an award of contract since it has the powers to suspend standing orders.[83] A third party would not be jeopardised if the council does not comply with such procedure because he is not bound to see that the council complies with the necessary procedure. He is not even bound to require from the council whether votes are made for the job as was held in the case of GEORGE ANYAGBORUE AKUBGE DISTRICT COUNCIL. (SUPRA).

Inorder to prevent council members from awarding contracts to themselves, council members are forbidden to engage in contracts with the council. The law stipulates that a local authority shall not enter into a contract with any person who is for the time being a member of its council. However if a member of a local government council has any pecuniary interest, directly or indirectly, in any contract or proposed contract, he shall at the meeting disclose the fact and shall not take part in the consideration or discussion of or vote on any such question.[84]

It is submitted that the above law which allows council members to disclose their interest in the award of contracts needs to be amended because if an interested person is allowed to sit in such a meeting his presence may influence an award, even if he does not take part in the deliberations, he can use other means of communication to effect the award on his sides.

4.5 BYE-LAWS IN NIGERIA LOCAL GOVERNMENT:

Although the councils of local government are for the most part 'deliberative bodies' - i.e. they decide local policies and see to their implementation they also have quasi legislative powers.

Their decisions may involve the ordinary person in obeying their orders, and this would be impossible unless they had such powers and the ability to enforce them. Accordingly local government legislation confers upon them the power to make 'bye-laws' for which penalties are imposed if the bye-laws are not obeyed.

According to Simonds,[85] "a bye-law is an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers ordering something to be done or not to be done, by some sanction or penalty for its none observance". Similarly, cross stated that a local government bye-law operates over the area of its jurisdiction; and it is made in compliance with the power conferred by statute on local governments.

According to Lord Russell C. J. in the case of KRUSE V. JOHNSON[86]

> "..... a bye-law necessarily involves restriction of liberty of action by persons who come under its operation as the acts which, but for the bye-law they would be force to do or not to do as they please. Further it involves this consequence - that, if validly made, it has the force of law within the sphere of its legitimate operation."

Under the 1979 constitution; local governments were authorised by edicts and or legislations to make bye-laws, and in the main a bye-law must be made under the common seal of the local governments and it shall not come into operation until it has been duly approved by the commissioner who is otherwise called the approving authority.

In Niger State, the Local Government Edict of 1982 authorises local governments to make bye-laws when it states that:

> "The Commissioner may(with the approval of the Governor) make adoptive bye-laws with respect to any matter for which a Local Government is authorised to make bye-laws by virtue of this law and or any other enactment and such adoptive bye-laws shall be brought to the notice of every Local Government by publication in the gazette or in any other manner as he may determine".[87]

As soon as a bye-law is made by a competent local government, the bye-law must be forwarded for approval by the local government to the approving authority who may either approve or make amendments or ever refuse to approve the bye-laws.

a bye-law must be intra-vires, it must comply with all the statutory procedures laid down for the formation of it. It must be equitable, fair and just. It must not be vindictive nor discriminatory. The wordings contained in it must be so must couched to be explanatory, simple, unambiguous and certain. From these pre-requisites, it is apparent that a bye law can be challenged in court if it is found to exhibit some bad or improper motive. They can also be challenged if the provisions of it are such that they can only be construed with a retrospective effect so as to impair existing right or obligation. To support this contention is the decided case of F. ADEKOYA AND ANOTHER VS. IBADAN MUNICIPAL GOVERNMENT.[88] In this case, the Ibadan Municipal Government was found liable for demolishing a house built by the plaintiffs in 1954 under the camouflage of a bye-law made in 1972. The defence put forward was that the structure demolished contravened the Ibadan City Council (Building Lines and Prevention of obstruction on Roads) Bye-laws 1972 Section 3 of which reads:-

> "No person shall erect or cause to be erected any building within the prescribed distance of any of the roads set out in the first column of the schedule thereto."

The defendant acting under the pretext of the bye-laws felt that since the building and a shed of the plaintiff was within the prohibited limits of the bye-laws destroyed them accordingly. It was held that the council was liable because the operative or commencement date of the bye-laws is 10th February, 1972 whereas the building was erected in 1954.

Similarly in the case of POWELL Vs MAY, [89] a bye-law made by the Glamorgan County Council prohibited betting in a public place, although both the Street Betting Act, 1806 and the Betting and Lotteries Act, 1934, allowed betting in a public place provided that certain requirements were complied with, it was held that the bye-law was bad, for it prohibited the doing of an act which the law expressly or impliedly allowed.

A bye-law is operative only in the area of a particular local government. It is therefore apparent that a bye-law can be challenged successfully if it is made applicable to a wider area than legimate jurisdiction. Thus, a bye-law which is made to affect the rights of people in another local government area is wrong since the operational jurisdiction of it is always confined to, and must not exceed the jurisdiction of that particular local government which made the said bye-law.

4.6 THE ENFORCEMENT AND CONSTRUCTION OF BYE-LAWS:

Bye-laws can be enforced in various ways such as preventing the erection of any building or structure which contravenes the existing bye-law, or the pulling down of such structure which are forbidden, and by imposing both damages and or imprisonment after prosecution. They can also be enforced by refusing to grant permits to do an act which is forbidden by the local law or by failure to fulfill all precedent conditions required by such bye-laws. A bye-law can also be enforced through an injunction to restrain any person or group of persons from contravening the provisions of such bye-law.

It is submitted that in some occasions, bye-laws awaiting the approval of the government machinery may not be attended for many months or even a year before a notification for either accepting, amending, or rejecting them is heard. The result make it impossible

for such local governments to enforce them since they are not laws until they have been approved as such as published by the local governments.

The construction of bye-laws in Nigeria follows the system being adopted in Britain and this has been expressed by Lord Simonds in DEARDEN V TOWNSHED [90] as follows:

> "Bye-laws of local government should be benevolently interpreted and replaced if possible .... and unreasonableness must be made out with greater strength than in the case of bye-laws of trading companies. Bye-laws of local governments should be construed to give reasonable object intended; and if on one construction a bye-law is good but on another bad, the former should prevail."
> Lord Simonds further stated that "where a bye-law is in part good and in part bad, it is severable and may be upheld in part.

It is in the light of the above case that the case of AKINGBADE Vs TOWN COUNCIL [91] was decided. In this case, section 42 of the Public Health Ordinance which empowers the making by the local authority of rules relating to the general public health, including "the regulation of bake-houses, dairies, aerated water manufactories, eating houses and food-preparing or food -preserving establishments, was held not to include the defendants rules of imposing a fee.

Bye-laws in Nigeria appear to be sterile laws because they sometimes lack enforcing agencies. To be able to enforce bye-laws or any law at all such enforcement must include the processes of arrest, detention and prosecution of those who breach their provisions. But the mechanisms to do these in Nigeria Local Government indicates that nothing effectively is provided to enforce compliance. No equipments are provided to discover or detect the contravention of the bye-laws since the majority of the local government staff are neither trained in such legal field, nor do we have legal department with the sufficient number of personnel to cope.

In Niger State, no legal department is created in local government headquarters and this applies to other states as well. It is therefore suggested that legal departments be established in all local government headquarters with a view to having better drafted bye-laws in the Country.

4.7 **STATUTORY ALLOCATION UNDER THE 1979 CONSTITUTION**

Money, it is agreed, is the backbone of any organization more so when such an organization is charged with responsibilities for the design and promotion of socio-economic development at the grassroots level and the provision of a wide ranging number of services and infrastructural support in such areas like primary education, basic healthcare delivery and social welfare among others which have since the 1976 Reforms formed the bedrock of local government functions and and responsibilities in Nigeria. It follows, therefore, that the extent to which a local government council is able to perform its statutory functions and discharge its responsibilities will depend very much on the amount of money or, in general, financial resources at its disposal.

Without any financial assistance, no local government can function. Lack of it and inability to effectively manage the meagre amount available have prevented local governments from employing essential services for their communities. It was this realization that led the Federal Military Government to start in 1976 to make financial grants to the local councils through the state governments and by 1988, local councils received grants directly from the Federal Government. For example in the financial year 1976/77, the Federal Government made ₦100 million available to local governments and in 1979/80 financial year, the allocation rose to ₦300 million. [92]

Local governments have three sources of revenue. Firstly the constitution makes provision for revenue allocation for local government councils, grant by the state government from its own resources is another source of revenue for local government and finally the local governments' independent revenue.

The 1979 constitution makes provisions for granting monetary allocation to local authorities. Section 7(6)(a)-(b) of the Constitution provides that:-

"subject to the provisions of this constitution:-

(a) the National Assembly shall make provisions for statutory allocation of public revenue to local government councils in the Federation; and

(b) the House of Assembly of a state shall make provisions for the statutory allocation of public revenue to local government councils within the state."

Section 149 (2) of the 1979 Constitution provides that the National Assembly shall distribute from the Federation Account to the States and the Local Government councils in each State on terms and in such manner as may be prescribed by the National Assembly. If any amount is standing to the credit of local government councils in the Federation Account, it will be allocated to the States for the benefit of their local government councils on such terms and in such manner as may be laid down by the National Assembly. The State government is also under duty to pay to local government councils in the state such proportion of its total revenue on such manner as may be prescribed by the National Assembly.[93]

In compliance with the above constitutional provisions, 10% of the Federal Consolidated Revenue of the Federal Account went to the coffers of local government in 1981.

Under the 1979 Constitution, the enactment of all money bills must be followed according to the laid down procedure as entrenched in Section 55 of the constitution. If such procedure is violated, it will be declared unconstitutional as was held in the case of **ATTORNEY-GENERAL OF BENDEL STATE V. ATTORNEYS-GENERAL OF THE FEDERATION AND OTHERS.**[94] In this case, the constitutionality of the Allocation of Revenue Act No.1 of 1981 was challenged by the Government of Bendel State on the ground, inter alia, that it had NOT been passed by the National Assembly in the manner and form required by the constitution. The two National Houses had been unable to agree on the Bill, as a result of which it was referred under section 55(2) of the Constitution to a Joint Finance Committee of the National Assembly. The committee apparently resolved the conflict but without any subsequent reference to either House, the decision of the Joint Finance Committee was sent as a Bill to the President for his assent. He assented it. The Supreme Court held the Act invalid since section 58 (4) of the 1979 constitution provides that because any House has referred a matter to a committee, it does not mean that the committee has been given the power to decide whether the bill should become law. Hence the National Assembly cannot delegate its legislative function to a committee:

Since local government are expected to generate internal revenue, states have enacted laws providing means by which such aim could be achieved. A Section of the Niger State Local Government Law 1982 states that:-

> "The revenue and other funds of local government are hereby declared to consist of all sums of money or funds as are lawfully in possession of the Local Government on the appointed day and the revenue accruing to a local government from the following sources:
>
> (a) money derived from taxes and rates imposed by the local government by virtue of the provisions of this law or any other enactment.
>
> (b) money derived from licence permits, dues, charge or fees specified by any bye-laws or rules made by a local government either in whole or in part;

(c) receipts derived from any public utility concern, or any service or undertaken belonging to or maintained by a local government;

(d) rents derived from the letting or leasing of any building or land belonging to the local government;

(e) statutory allocations from the Federal Government or State Government, grant-in-aid from the State Government generally,

(f) any sum of money which may carefully be assigned to a local government by any public corporations,

(g) interest on the investment accruing to a local government,

(h) such sums of money as may be granted to a local government by another local government and;

(i) such sums of money as may be derived by a local government by a joint board in accordance with the provisions of this law.[95]

Grants from both the Federal and State Governments to the Local Government Authorities enable such authorities to be fully armed in executing of their projects, but in practice such grants from both levels to enable local government plan ahead and carry out their activities would not be forth coming at all, or at the right time.

The state governments usually received the federal grants and keep them at times from the reach of the local governments to whom they should be given. Diversions of funds were sometimes carried out by the State Governments so much that local governments were unjustifiably denied funds. By 1988, grants now are granted directly to the local governments from the Federal Account.

Therefore, for local government to maintain their autonomy, they should as far as possible depend less on Federal and State Governments support by way of grants and unless the framework of their finance is properly designed, their future capability as viable and virile institutions capable of delivering goods and services of the right quantity and quality will remain in doubt.[96] Local governments should embark on development of property rating inorder to secure a reliable source of internal revenue.

The Federal and State Governments should provide adequate scope for the local governments to develop gradually, various systems of local income tax as an additional source of development funds for the local governments.

4.8 FUNCTION OF LOCAL GOVERNMENT COUNCIL:

The main functions of a local government council are as follows:-

(a) "the consideration and the making of recommendations to a state commission on economic planning or any similar body as -

(i) the economic development of the state, particularly in so far as the areas of authority of the council and of the state are affected, and

(ii) proposals made by the said commission or body;

(b) collection of rates, radio and television licences;

(c) establishment and maintenance of cemetries burial grounds and homes for the destitute or infirm;

(d) licensing of bicycles, trucks (other than mechanically propelled trucks) canoes, wheel barrows and carts;

(e) establishment, maintanance and regulation of markets, motor parks and public conveniences;

(f) construction and maintenance of roads, streets, drains and other public highways, parks, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a state;

(g) naming of roads and streets and

(h) provision and maintenance of public conveniences and refuse disposal;

(i) registration of all births, deaths and marriages;

(j) assessment of privately owned houses or tenament for the purpose of levying such rates as may be prescribed by the House of Assembly of a state; and

(k) control and regulation of -

(i) out-door advertising and hoardings,

(ii) movement and keeping of pets of all description;

(iii) shops and kiosks,

(iv) restaurants and other places for sale of food to the public, and

(v) laundaries.

The functions of a local government council shall include participation of such council in the government of a state as respects the following matters, namely:-

(a) the provision and maintenance of primary education;

(b) the development of agriculture and natural resources, other than the exploitation of minerals;

(c) the provision and maintenance of health services; and

(d) such other functions as may be conferred on a local government council by the House of Assembly of the state. 97

Hence, the state government through the House of Assembly may confer additional functions on local government. The danger of having enumerated powers raises the problem of whether a House of Assembly can take away any of the enumerated functions. According to the rules of interpretation stated by Bowen L. J. in RE:CUNO [98] and adopted in the case of S. L. EKEOCHA V. THE CIVIL SERVICE COMMISSION, IMO STATE, [99] that "in the construction of statutes you must not construe the words so as to take away rights which already existed before the statute was passed unless you have plain words which indicate that such was the intention of the legislature", (per Oputa C. J. High Court Owerri), it is suggested that the House of Assembly may only add to functions enumerated and not take away from the list.

Following the above enumerated functions, similar functions have been incorporated in Niger State on Establishment of Local Government Edict, 1982. [100]

However, subject to the provisions of any instrument establishing a local government council, such a council may delegate to subordinate area authority upon such conditions as it may deem fit, any power conferred under this part or any powers to enforce any bye-laws made by the local government council. [101] Other additional functions

conferred on local government by Niger State House of Assembly include:- "power to enter into contract, power to accept gifts, power to build, acquire buildings for the purpose of transacting its business or for public meetings and assemblies, power to make declarations and to recommend modifications of customary law of its area of authority " [102] etc.

4.9 FEDERAL/STATE AND LOCAL GOVERNMENT RELATIONS: AN APPRAISAL

The first republican constitution witnessed a system of straight forward relationships between the regional governments, the predecessors of the state governments, and their local authorities based as supervisor-subordinate relationships. The federal authority then had nothing, even remotely to do with local government. The reason is simple. There was the federal constitution which dealt essentially with federal matters and their relationships with the regional governments, which also had their own constitutions. Local governments as a residual matter, rightly fell within the constitutional jurisdiction of each regional government that could make and unmake the institution according to its political expediency.

The legal provisions for the establishment of local governments throughout the country were such that rendered local governments not only subordinate but also importent, with the result that the local authorities were faced to dance to the tune of their governments and masters. For example, on a very flimsy excuse or for political reason, any local government council could be dissolved at will by the government with or without recourse to any tribunal of inquiry.

In recognition of the importance of local government in national development, the federal military government drew up a set of guidelines on local government which all the state governments later adopted with minor modifications to suit local conditions. By advocating a uniform pattern and prescribing a minimum population figure for local government throughout the country, the federal government was able to limit the area

of discretion of the state governments for example, made its own local government Edict, but no state government could create a local government area with a total population of 150,000 without the prior approval of the Federal Government.[103] This was significant modification in the constitutional relationship between the state government and local government.

Under the 1976 Edict, an area of significance in the relationship between the state and local governments is the appointment of chairman of a local government council. The local government edicts do not permit any local government to appoint its own chairman. Each council can only make recommendations by nominating three of their members from whom the Governor would select the chairman for the council.[104] On the part of the state government, the local government edict has not given any incumbent State Governor the power of arbitrary dissolution of local government. In the past, it did not require any formality to deal with any erring local government; the existing edict prevented the state government from taking any action on a defaulting local government without first satisfying itself that such action would be justifiable and then subjecting the authorities concerned to judicial commission of inquiry.

There was an illusion of operating of local government system in this country since 1979 when the civilian administration under a presidential system became operative. The hopes of the founding fathers of the 1976 local government system were dashed as the 301 local governments gradually rose to a staggering number of well over 700 by 1981. The gradual erosion of their powers and financial base in the face of mounting aspirations unviable and ineffective. Infact, they became puppets in the hands of State and Federal politicians.

The situation has continuously degenerated with the federal government unwittingly taking over local government responsibility by the creation of the Directorate of Food, Roads and Rural Infrastructure.

Essentially, the functions of the directorate fall within the competence of strong and viable local government system. Apart from setting up another bureacracy that would consume a good deal of the "fund under administrative changes," the federal government has no machinery for carrying out such a laudable programme other than using the state and local government. A serious federal government that advocates rural development as the cornerstone of its programme could have spent less and achieved more through an effective local government system. If for political reasons, the Federal Government wants its presence felt at the grassroots, it could set up a "temporary" monitoring unit to ensure compliance with its objective. In a federal system "universally, unless political points are intended to be scored, there is an empirical approach to the administration of the governments and this (local government) is best left to the state within a federation for reasons of convenience, competent administration of the affairs of people and of the collection of revenue.

By 1970, the powers and authorities of local governments had been significantly circumscribed so that they tended to become the local arm or subordinate agent of the state governments and had come to depend heavily on grants from the state governments. As their tax bases were gradually being eroded, their effectiveness declined sharply. Local governments have over the years suffered from the combined encroachment upon what would have been the exclusive preserves of local governments. Lack of adequate funds and appropriate institutions have continued to make local governments ineffective.

Later, the Military Administration examined the federal-local and state - local financial relationships and soon saw the need for a crucial decision to remedy the local governments financial problems. The Military Administration saw the local government as a third tier of government, and took radical steps to ensure their birth in the

1979 constitution. Consequently, and in line with their newly specified executive councils of the respective states were directed to allocate 25 percent of their total recurrent expenditure to the local governments every financial year to be shared as follows; 75 percent of the amount to be shared on the basis of population and the remaining 25 percent to be shared on the basis of equality.

The state executive council exercised supervisory roles over the financial managements of the local governments. A state executive council for example, could cause inquiries to be held at such times and such places it considered necessary. At any time the executive council was satisfied that a particular local authority had defaulted in the performance of the functions conferred upon it by the Edicts, it could make an order declaring the local authority to be in default and could by order direct the local authority to perform such functions in a prescribed manner within a given period of time. More importantly, the Executive Council, through the Military Government had power to dissolve a defaulting local government which it considered to be in serious default in the performance of its functions, nevertheless these powers were used sparingly. [105]

FOOTNOTES ON CHAPTER IV

48. The Constitution of Federal Republic of Nigeria, 1963, Section 2.

49. IBID, Section 3(4)

50. The Constitution of Northern Nigeria Law, 1963, Section 73 - (1) and (2).

51. The Constitution of Eastern Nigeria Law 1963, Section 77; The Constitution of Western Region Law, 1963, Section 72 and the Constitution of Mid-Western Nigeria Act, 1964, section 72.

52. Adedeji Adebayo (1972) 'Financing Local Government in Nigeria; An overview in Adedeji and Rowland (Eds). Local Government Finance in Nigeria: Problems and Prospects, University of the Press, Ile-Ife. p.4.

53. Report of the Constitution Drafting Committee, Federal Ministry of Information, Lagos (1976) Vol.II., P.148.

54. 'FORWARD' to the Guidelines for Local Government Reform by Brigadier Shehu M. Yar'Adua, August, 1976.

55. Section 7 (a) - (b) Constitution of the Federal Republic of Nigeria, 1979.

56. Suit No. ID/494/80 of 5th March, 1982 (Ikeja Judicial Division - decided by ADEOBA J.

57. (1982) 3 NCLR 635

58. (1981) INCLR 31

59. (1981) INCLR 51

60. 1979 Constitution of the Federal Republic of Nigeria, Third Schedule.

61. (1981) INCLR 58

62. (1981) INCLR 63

63. (1981) 1 NCLR 88

64. (1982) 3 NCLR 881

65. (1981) 1 NCLR 31

66. (1981) 2 NCLR 529

67. (1982) 3 NCLR 680

68. Section 7 (2) 1979 Constitution

69. (1981) 2 NCLR 589

70. Kaduna Essays in Local Government, S. Ade Oladosu, p.153.

71. (1981) 2 NCLR p.399

72. (1981) 2 NCLR p. 399

73. Kaduna Essays in Local Government S. Ade Oladosu pp. 154

74. (1980) NCLR 117

75. Niger State Local Government Law, 1982 - section 80

76. Section 7 (2), 1979 Constitution.

77. Kaduna Essays in Local Government S. A. Oladosu pp. 158

78. Cross C. A. Principle of Government Law pp.50

79. Newswatch Magazine September 26, 1988 p. 10.

80. Nigeria Supreme Court Cases (Sasegbon) Vol.6 pp.340

81. A. T. Oyewo. The Principles of Administration and Local Government Law in Nigeria p.87

82. (1962) NCLR 116

83. IBID

84. A. T. Oyewo - The Principles of Administration and Local Government Law in Nigeria p. 86

85. Simonds - Halsbury is Law of England, Third Edition, Vol.24, p.510

86. (1988) 2 QB 91

87. Section 111(1) Niger State Local Government Edict, 1982.

88. Suit No. 1/154/76 (unreported)

89. (1946) 1 ALL E. R. 444

90. (1965) 11 QB

91. 21 HLR 90

92. Keynote Address delivered at the Meeting of Commissioners of Local Government by Brigadier S. M. Yar'Adua, Chief of Staff, Supreme Headquarters, Friday, 22nd May, 1978.

93. Section 149 (2) - (7) of the 1979 Constitution.

94. (1982) 3 NCLR (Vol.2), p. 1.

95. Section 85, Niger State Local Government Law, 1982.

96. L. Adamolekun and L. Rowland:
The New Local Government system in Nigeria:
Problems and prospects for implementation. Chap. 6

97. 4th Schedule, 1979 Constitution.

98. (1989) 43 Ch. D. 12, 19

99. (1981) 1 NCLR 154 x 164

100. S. 60 and S. 61 of the Local Government Edict, 1982, Niger State.

101. Section 62 Local Government Edict, 1982 Niger State.

102. Section 63 - Section 68 Local Government Edict, 1982, Niger State.

103. The Report of Nuhu Bayero Panel.

104. Section 27 Local Government Edict, Benue State No. 14 of 1976.

105. The Nigerian Journal of Local Government Administration, Volume 2, No. 1. December, 1986.

CHAPTER V

JUDICIAL REVIEW

5.1 JUDICIAL REVIEW AS APPLICABLE TO LOCAL GOVERNMENT

In some countries, redress against administrative wrongs is normally obtainable only within the administrative hierachy itself. But most legal systems demarcate sets of relationships between the governors and the governed and areas of administrative activity, in which claims and controversies may be resolved and grievances redressed through the medium of courts. These courts are not necessarily the ordinary courts of law; they may be special administrative courts. If they are special administrative courts, they will almost certainly apply substantive and procedural rules district from the ordinary law of the land, rules which recognise the dispanities between the administration and the citizen, between the situations that characterically arise in public law and in private law.[106]

Courts of law have jurisdiction to review the actions of local authorities and other administrative authorities. The purpose is to safe-guard the individuals against arbitrariness of public authority. Different administrative actions may give rise to complaints of different kinds. If an individual feels aggrieved against local authority, his remedy depends on many grounds. The grounds on which a remedy is right and the kinds of remedy, each case will depend on the fact and circumstances of a particular case. An act of administrative or quasi-judicial. Administrative tribunals exercise their functions like courts of law, but the procedure followed by a court of law. The only difference is that the administrative body need not follow the rules of evidence. Therefore if a matter comes before a quasi-judicial body to seek for relief because of a dispute the tribunal allows a fair

hearing to the aggrieved party to state his facts in suport of his assertions based on law.

5.2 THE DOCTRINE OF ULTRA-VIRES:

The term 'Ultra vires' was first generally used to denote excess of legal authority by independent statutory bodies and railway companies in the middle year of the nineteeth century. The term later came to be used in relation to municipal corporations, then to local government authorities; andfinally to the crown and its servants and even to inferior judicial bodies.[107]

The House of Lords has laid down the principle in the case of A.G.V Great Eastern RY "whatever may fairly be regarded as incidental to, or consequent upon, those things which the legislature has authorised, ought not (unless expressly prohibited) to be held by judicial construction, to be ultra vires."[108] However, the Local Government Act 1972 related the operation of the doctrine to the new local authorities, which have power to do anything calculated to facilitate, or conducive or incidental to, the discharge of any of their functions.

The doctrine of ultra vires may restrict the discretionary activities of a local authority, the effect of which is that a local authority may do only those things which an Act specifically says it should.
The effect of this doctrine is that the legal officers of local authorities must constantly watch to see that their councils do nothing that the law does not permit, if they do, members of the council may be made to meet out of their own pockets the cost of such unauthorisized expenditure. By constrast, the work of municipalities in West Germany and Sweden is based on the opposite doctrine of intra-vires i.e they may spend their money on whatever activities they choose, providing that such activities are themselves legal and provided that there is no existing legislation which already allocates them to some other

arm or agency of government.

Being creatures of statutes, it is necessary for local government councils to show that they have statutory authority for what is done or what they propose to do. In other words, they can do only those things which they are authorised to do by the governing statute (Edict). If they act otherwise than in this way, their action will be held ultra vires. Similarly, if the act is done within the powers given under the law, but without following the procedure prescribed under the law, it will be a procedural ultra vires,. Thus in the case of **Attorney-General V. Fulham corporation,**[109] **where** it was held that a local authority which had power under the Baths and wash houses Acts 1846 to 1878 to establish baths, wash-houses and open bathing places was not entitled to carry on the business of a laundry, and was acting ultra vires in washing or partly washing customers clothes as district from providing facilities for persons to wash their own clothes. In the case of **Chief A. Akanro V. Lagos State Electoral Commission,**[110] the plaintiff wanted the court to restrain the Lagos State Electoral Commission from holding elections to the Local Government Councils in Lagos on 29th March, 1980. The commission wanted to hold the elections by using the register of voters prepared by the Federal Electoral Commission for the national election in 1979. The plaintiff contended that the 1976 register, if used would leave many voters who became entitled to vote after 1979, without a right to vote. Secondly, according to the constitution, a register of voters is required to be prepared by the commission and then and only then elections to local government councils could be held.

Balogun J. accepted these arguments and held:

> "At the time the said Register of voters was prepared it was made clear to the electorate that it would not be used for Local Government Elections. I do not think that there

> can be a system of Local Government by democratically elected Local Government Councils under any enactment which does not make it possible for the electorate to know at the time a Register of voters is being prepared that the Register of voters will be used for Local Government Elections. Nor do I think that there could be a system of Local Government by democratically elected Local Government Councils if a Register of voters prepared for a separate purpose and expressed at the time it was prepared as a Register of voters not to be used for any Local Government elections is to be imposed on the electorates as the register to be used for any Local Government Elections".

Thus the defendants were restrained from organising and undertaking or holding any elections into the state local government councils as planned since their actions were ultra vires; the same view was taken by the court in **Alhaji Chief Akanbi Olatunde V. The Lagos State Electoral Commission**.[112] Similarly in **Banjo and others V. Abeokuta District Council,**[113] the action of the Secretary of the district council in refusing to issue permits to the taxi-owners on the ground that the number of taxis were more in the area of jurisdiction of the council was held to be ultra vires as there was no such provision in the bye-law of the council. And in **Godwin V. Governor of Bendel State,**[114] the Local Government Edict, 1976 of Bendel State provided for the suspension and dissolution of local government councils and prescribed a procedure for doing it. The Governor ordered the dissolution of the local government councils without following the procedure. The HighCourt of Bendel declared the action of the Governor ultra vires as the Governor did not follow the procedure prescribed under the law before taking action. Also, in the case of **Balogun V. A.G. for Lagos State**[115] the Local Government Law 1980 which gave blanket power to establish, create or constitute new local government councils in Lagos State, was held as ultra vires the legislature, as the state House of Assembly could not delegate this important legislative power to the Governor. Accordingly, the court issued an interlocutory

injunction to restrain the defendants, their servants and agents from establishing, creating or constituting new Local Government Councils in Lagos State and from holding elections thereto under the said law.

Bye-laws are ultra vires if they are repugnant to federal law. In **Powell V. May,** [116] a bye-law made by a county council forbidding generally any person to frequent or use any street or other public place for the purpose of bookmaking, betting or wagering was held invalid as being repugnant to the street Betting Act 1906 and the Betting and Lotteries Act 1934, which would have allowed the appellant bookmaker certain defences.

Under the Niger State Local Government Edict, 1976, [117] the local government is empowered to make bye-laws. If it makes a bye-law on an item which is not included in those sections, such a bye-law will be ultra-vires: Thus, no local government can arrogate to itself more powers than it was granted by the act; nor can it make any bye-laws to prohibit what the empowering enactment sought to regulate. In the case of **R. V. Wood,** [118] the Public Health Act 1848 enabled a local board of health to make bye-laws with respect to the removal by the occupier of dust, ashes, rubbish, filth, manure, dung and soil. A board made a bye-law under this provision directing all occupiers to remove all snow from the footpath opposite their premises. The bye-law was held to be ultra-vires for it went beyond the enabling powers. Similarly, in the case of **Raji Are and other V. Lagos City Council,** [119] The council was held liable for demolishing the houses of the plaintiff because section 31 of the Township Ordinance Cap 216 did not empower the council to do more than prohibit the erection of new building and if the necessity arose to demolish any building, recourse should be heard to the courts hence bye-law, of the Lagos City Council was ultra vires because it did not give the council power to demolish without recourse to courts. The same

decision was reached in **Daniel Adenuga V. Lagos Town Council,**[120] In Ibadan Municipal Government Vs. I. Ogunkoya, [121] where the court was asked to determine whether a councils control and management of motor parks bye-laws of 1979 is valid to affect the registered private place of a person. It was held to be bad and ultra-vires the power of the local government so to do.

Similarly, public authorities, such as local authorities and public corporations, have a general power to make contracts in the discharge of their functions. They may have specific contractual powers as well. If a public authority enters into a contract in relation to some matter that is beyond its powers, the contract is ultra vires and void as was held in **Rhyl U. D. C. V. Rhyl Amusements.** [122] Therefore contracts of Local Authorities must be made in compliance with statutory provisions and in accordance with the standing order. If statutory provisions for the award of contract are not followed, such acts by local authorities would be declared ultra-vires. But in practice provisions of the standing order are not adhered to. There is no sanction against an authority who breaches the procedure; the person about to be injured or damnified can ask for an order of mandamus to compel compliance as was held in **R. V. Hereford Corporation Exp. Harrower.**[123]

5.3 JUDICIAL REMEDIES AGAINST LOCAL GOVERNMENT

Local authorities are subject to the control of the courts in much the same way as any other kind of corporate body or any natural person in the sense that if they infringe a private right or are in breach of contract they may be sued in tort or contract, and if they commit a criminal offence proceedings may be taken against them.

The courts have a limited kind of supervisory jurisdiction over certain acts of any executive agency, including local authorities and in the exercise of this jurisdiction may grant the orders of mandamus, prohibition and certiorari where such orders run, may issue declarations and injunctions in relation to acts or proposed acts which are ultra vires or otherwise contrary to law, and may hear appeals against acts or decisions where a right of appeal is conferred by statute.

The order of mandamus issues from the High Court to some person or body to compel the performance of a public duty imposed by law where no other effective means of redress is available. It may therefore be used to compel a local authority to carry out some duty upon it by statute or common law. But there are several limitations on the power to issue an order. In the first place the duty must be an absolute one, and not one which may be exercised if the authority chooses. In **R. V, Poplar Borough Council,** [124] the borough council refused to pay sums under the precepts issued by the London Country Council and the metropolitan District Asylums Boards; it was held that mandamus lay to compel the council to levy a rate to meet the precepts, for this was the only effective means of securing the performance of a public duty. A council may not be compelled by this means to undertake some activity which is merely permissive (e.g the making of bye-laws).

But mandamus lies to compel the exercise of a discretion one way or the other and to compel the exercise of a discretion in a way that extraneous considerations are excluded and that issues are dealt with on merit.

Thus in R.V London Country Council, Ex p. Corrier, [125] the country made bye-laws prohibiting the selling of any article in the parks under its control except with the consent of the council. The council later resolved that no new permission should be granted

and that the existing permissions should be granted. It was held that the bye-law conferred a discretion on the council. In passing the general resolution to grant no permissions it had failed to exercise its discretion at all and mandamus accordingly lay to make the council hear an application and decide on its merits. In the case of **Fawehinmi V. Col. Hakilu and Lt. Col. A. K. Togun,** [126] it was held among other reasons that mandamus is not available where there is no duty but a mere discretion and that the duty to grant a mandamus order must be reasonably certain but it may be a duty to exercise a discretion.

Secondly, the applicant for the order must show that he himself has a substantial, personal interest in the performance of the duty.

Thirdly, an order will not be made convenient, beneficial and effective. The order of mandamus is purposely introduced to prevent the possibility of injustice and tyrancy in public administration as enunciated by Mansfield **J. in R. Vs. Barker.**[127] The Judge had this to say; ....." It was introduced to prevent disorder from a failure of justice; and defect of police. Therefore it ought to be used upon all occasions where the law has established on specific remedy, and where justice and good government there ought to be sought. "An applicant for this order must ensure that the following conditions are complied with before he files his paper or suit:-

(a) He must establish the fact that the breach of duty which he seeks to be performed is an imperative public duty bestowed on the respondent to do;

(b) He must also show that he had asked for this duty to be done by the authority and he has been denied such a performance.

(c) He must prove also that he has a substantial personal interest in the performance of the duty; and

(d) That the court before whom the application is pending has jurisdiction to entertain his action.

Thus if a local authority disobeys an order of mandamus, whether derived from the prerogative suit or statute, i.e. to arrest and to imprisonment until the order is obeyed, as was held in **R.V. Worcester Corporation.** [128]

The orders of prohibition and certiorari issue from the High Court to prevent inferior courts from exceeding the limits of their legimate powers or from otherwise acting unlawfully. Prohibition restrains an inferior court from completing an act already begun; certiorari enables a decision already made to be reviewed and if necessary quashed. These orders lie not only against inferior courts. It was held in **R.V. Electricity Commissioners** [129] that they extend to anybody of person who have a duty in law to act judicially, that they lie. In the case of V.C+ A.B.U. and 3 ors V. Tau Alhaji Ado and 1 other,[130] it was held that certiorari does not lie in respect of executive or administrative acts, but also in respect of judicial or quasijudicial acts. Similarly in **R.V. Padalintion Officer, Ex p. peachy property Corporation,**[131] it was hel that "a valuation officer is a public officer entrusted with a public duty. He has legal authority or power to determine questions affecting the rights of subjects, namely, to assess the value of hereditaments. This power carriers with it the duty to act judicially and the valuation list is liable to be quashed on certiorari;" so also in **R.V. London County Council. Ex p. The Entertainment protection Association,**[132] The London County Council granted a licence for cinematograph entertainment on Sundays subject to certain conditions as to contributions to charity and as to the character and hours of entertainment. It was held that the County Council in granting the licence acted "judicially" in the sense that it had to decide on evidence between a proposal and an opposition, and the writ of certiorari would issue to bring up and quash the order of the County Council as being made without jurisdiction, the council having no power to dispense with

The orders of prohibition and certiorari have relevance in local authority administration for there are many occassions when local authorities are called upon to "determine questions affecting the rights of subjects" and when accordingly they are acting in a judicial or quasi-judicial capacity. In these circumstances the orders may lie against them if they act in excess of their jurisdiction (if an act or decision is ultra vires) or if they act otherwise unlawfully. The orders will lie if an authority, when acting in a judicial or quasi-judicial capacity. In these circumstances the orders may lie against them if they act in excess of their jurisdiction (if an act or decision is ultra vires) or if they act otherwise unlawfully. The orders will lie if an authority, when acting in a judicial or quasi-judicial capacity, disregards the "principles of natural justice, for the authority is then acting unlawfully. These principles of natural justice are not codified. Tucker L.J. said **Russell V. Duke of Norfolk**[133]

> " There are ..... no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter under consideration and so forth."

In the case of **Prince Asiru Maradesa V. Military Governor of Ovo State** and 1 other,[134] the court of appeal held that an application for an order of certiorari must be supported by a statement of the name and description of the application, the relief sought and the grounds upon which it is sought, the name and address of the applicants' address for service. Also if a local authority, acting in a judicial or quasi-judicial capacity and within its jurisdiction, reaches a decision which discloses on the face of the record an error in law, then certiorari will lie to bring the decision into the High Court to be quashed.

The legality of an act or decision of a local authority may be tested by means of an action in the High Court for a declaration or

injunctionor for a declaration coupled with an injunction, and this proceeding is available where it is alleged that a right is infringed, or where there has been a breach of the rules of natural justice, or an excess or abuse of jurisdiction, or if the act or decision discloses an-error of law.

Injuction is a Court order requiring a party to whom it is addressed either to refrain from doing something or require that party to do something. When it is required that the party to do something, it is called mandatory injunction. However, when the court decides to issue an injunction, it has to be issued judicially, i.e. on the basis of merit. If a person feels aggrieved with the injunction, he can appeal to a higher court to get the injunction vacated or annulled. Injunction will be issued to public authority in the same way as it should be given to a private authority. In the case of **Bradbury V. Enfield B.C.** [135] a local authority decided to switch to a new educational system and to do so, they had to give consent to the parties and right to hearing. This was not done and an aggrieved party sued urging the court to issue an injunction since the procedure was not been followed. The local authority took the view that to go back to old system would cause a lot of inconveniences and chaos because it had already gone far in the new system. The court rejected the local authority's argument and issued an injunction. If a local authority commits a nuisance which is unathorised, then it is no defence for the local authority to say that was the most reasonable action they could take in that circumstances, or it was taken in public interest. In the case of **Pride or Derby and Debyshire Angling Asson, Ltd V. British Celanese Ltd,** [136] the local authority which had the statutory duty to provide for sewage system in the town complied with the duty which was adequate to meet the population. But later the population increased

and the sewage was over used. The authority therefore provided for a drainage where it flows into a lake. The lake was used by the club and this drainage affected fishes in the water and thus affected the club. The club sued urging an injunction to be issued against the local authority to disallow it from flowing the refuse. It was contended by the local authority that what it did was proper. The Court rejected the argument on the ground that the action of the local authority had affected the rights of the citizens (the club members) and therefore an injunction was issued.

A declaration is an order of the court which merely declares what the legal rights of the parties to the action are and which has no coercive force. But though a declaration has no coercive force it may effectively undermine the enforceability of an administrative act. The court will not grant a declaration on a matter which by statute is within the exclusive jurisdiction of another tribunal or other body. In the case of **Ridge V. Baldurin,**[137] a chief constable was dismissed by the watch committee following criminal proceedings against him in which he was acquitted of the charge of conspiring to obstruct the course of public justice. He brought an action against members of the watch committee, inter alia, for a declaration that his dismissal was illegal, ultra vires and void. The declaration sought for was granted, one of the grounds being that there had been a failure on the part of watch committee to observe the rules of natural justice for they had not told him what was alleged against him or heard his defence or explanation. Thus, a declaration will not be granted where the question raised is purely hypothetical or academics. Similarly, the court will not grant a declaration on a matter which by statute is within the exclusive jurisdiction of another tribunal or other body.

When a person is physically subject to some form of illegal restraint, whether or not by a local government authority or any public authority or official, the remedy available to secure his release is the writ of habeas corpus. By it the court require the person exercising the restraint to show lawful cause for doing so. If he cannot do this the release of the detainee is ordered. A case in point is the case of **Abaje V. The Commissioner of Police,**[138] in that case, on the application of Abaje, the High Court Ibadan, caused a writ of habeas corpus to issue on June 12, 1969 on the then Commissioner of police, Western State. The applicant's complaint was that he was unlawfully detained by the police for a period of 12 days when his application was heard by the High Court. In the affidavit he deposed to the fact that he repeatedly demanded the reason or authority for his detention by the police, but no one answered him. He wrote letters to the same effect but he got no reply. Instead, he claimed to have been manhandled. The commissioner of police admitted detaining the applicant as aforesaid and based his authority for so doing under orders said to have been made by the Inspector General of Police, who, it was said, acted under and by virtue of powers vested in the Inspector general of police by section 3 (1) of the Armed Forces and police (special powers) Act No. 24 of 1967 which provides, inter alia:

> " If the Inspector general of police .....
> is satisfied that any person is or recently has
> been concerned in acts prejudicial to public order,
> or in the preparation or instigation of such acts,
> and that by reason thereof it is necessary to exercise
> control over him, he may by order in writing direct
> that that person be detained in civil prison or a
> police station; and it shall be the duty of the
> superintendent or other person in charge of any civil
> prison, or the police officer in charge of any police
> station, as the case may be, if an order made
> in respect of any person under this section is delivered
> to him, to keep that person in custody until the order is
> revoked."

The learned Judge, Aguda J. as he then was, found all the facts deposed to in the applicant's affidavits established to his satisfaction

as those facts were not challenged in any way by the Commissioner of Police. Hence, the Court held the detention of the applicant under orders dated May 31, 1969 and June 4, 1969 respectively were unlawful and the applicant was entitled to be released.

Proceedings in respect of a breach of public rights are theoretically at the instigation of the Attorney-General, as the protector of public rights, and the person who wishes to institute proceedings must ask the Attorney-General to take action and to lend his name in the proceeding which will be taken at the plaintiff's expense. However, a private person may sue in his own name where the interfearance with the public right is such that some private right of his is at the same time interfeared with or where the plaintiff suffers special damage peculiar to himself from an interfearance with a public right. Public Officers Protection Act as applicable to Local Government:-

> "When any suit is commenced against any local government for any act done in pursuance or execution or intended execution of any law or of any public duty or authority, or in respect of any alleged neglect or default in the execution of any such law, duty or authority, such suit shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or in the case of a continuance of damage or injury within six months after the ceasing thereof." 139

The Public Authorities Protection Act, 1893 of England applies where any action, prosecution, or other proceeding is brought against a local authority for any act done in pursuance, or execution, or intended execution of any Act of parliament, or of any public duty or authority, or in respect of any neglect or default in the execution of any such Act, duty or authority. However, one exception to this rule as laid down by the House of Lords in Bradford Corporation Vs. Myers.[140] The Bradford Corporation was empowered by local Act to acquire and carry on a gas undertaking and to sell coke and other residual products; resulting from the management of gas. The plaintiff ordered from the Corporation a ton of coke; but on its delivery it was, owing to the negligence of the Corporations servant, precipatated through the plaintiff's shop

window. The plaintiff sued for damages in the county court, but issued his plaint after the period of six months prescribed by the Act of 1893. The House of Lords held that an action based upon a contract entered into under powers conferred by an Act of parliament is not an action for an act done in persuance or execution of an Act of parliament, nor in respect of any neglect or default in the execution of any such an Act. The Act States that: "The action must be commenced within six months next after the act, neglect, or default complained of, or in case of a continuance of injury or damage, within six months next after the ceasing thereof,"

Thus where the Act Applies, it affords protection to a public servant and public servant include staff of local authorities.

Public servants including local government workers are given certain protections which prevent them from being sued after a period of three months when the act, neglect or default complained of had been done; or in a case of a continuance of damade or injury, after three months that the injury has ceased. For sacrificing themselves for public duties, they are protected against actions that may be taken against them. The Act that protects public servants from being sued is an offshoot of the English public Officers Protection Act of 1893. In the case of Obiefuna V. Okeye,[141] a claim for general damages based on negligence was an accident which occurred on the 24/5/88 when the plaintiff was injured as a result of the negligent driving of a police van by the defendant in the course of his duties. The plaintiff was so terribly injured that he had to be hospitalised and he could not recover until the 17/1/89 when he was discharged. On 31/3/89 he then brought an action for damages against the police driver. It was contended that the writ of summons was taken out of time as provided by the statute. The court held that the public Officers Protection

Act begins to run from the date of the act, neglect or default complained of, or in the case of a continuance of injury or damage, from the date of its ceasing. Therefore, in the case of personal injuries caused by negligence, the statutory period runs from the date of the accident. Similar views were expressed in the cases of Carey V. Bermondsey Metropolitan Borough Council;[142] Freeborn V. Leeming;[143] Shehu Ahmed V. Gusau Local Government:[144] Ibrahim Eshi and 3 ors V. Alhaji Bagudu Waziri and 7 others[145] Mohammed Bagudu Shuaibu V. Niger State Water Board and 3 ors[146] and Hama V. Ibadan District Council.[147]

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5.4 THE ACT AND LOCAL GOVERNMENT WORKERS:

Before the 1979 constitution came into force, members of the local government staff were not enjoying the privileges conferred by the public Officers Protection Act of 1958 in Nigeria, because by interpretation they were excluded from being called public officers.

The words "Public Officer" by the interpretation Act of 1964, Section 18 (1) means - " a member of the public service of the Federation and public service of the Federation means the service of the Republic in a civil capacity in respect of the Government of the Federation which includes services in the states where the officers are normally appointed by the public service commission.

The 1979 constitution [148] defines" service of a state" to include the following:-

(a) clerk or other staff of a House of Assembly.

(b) member or staff of the High Court, the Sharia Court of Appeal, the customary court of Appeal or other Courts established for a state by this consitution, or by a House of Assembly

(c) member or staff of any commission or authority established for the state by this constitution or by a law of a House of Assembly.

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(d) staff of any local government council or statutory corporation established by a law of a House of Assembly,

(e) staff of any educational institution established or financed principally by a government of a state, and

(f) staff of any company or enterprise in which the government of a state or its agency holds controlling shares or interest ....."

Since staff of the local government being employed by the Local Government Service Board, they were thereby excluded from the protection envisaged by the Act. However, as a result of the 1979 constitution, local government employees, their members and staff have been equated to be public officers for the purpose of the conduct as enshrined in the constitution.[149] This extends also to the Chairman, members of the Boards or other governing bodies and staff of statutory corporations and companies in which the Federal or State Government has controlling interest.

Also section 277, part IV dealing with the interpretation of the 1979 Constitution stipulates that public service includes staff of local government council or statutory corporation established by a law of a House of Assembly.

Therefore the public officers' protection Acts extends to employees of Local Government Authorities.

FOOTNOTES TO CHAPTER V

106. De Smiths Judicial Review of Administrative Action, By J. M. Evan, P.3.

107. Ibid, p. 94

108. (1880) 5 App. Cos. 473, 478.

109. (1921) 1 ch. 440

110. (1981) INCLR 51

111. Ibid, p. 58

112. (1981) 1 NCLR 63

113. (1965) NMLR 259

114. Unreported Suit.

115. (1981) 1 NCLR p. 31

116. (1946) KB. 330

117. Section 109 (1) - 111 (1) Local Government Edict, 1982, Niger State.

118. (1855) SE and B. 49

119. (1965) LHCR 203

120. (1951) 13 WACA 125

121. Suit 1/77/81 (High Court of Ibadan)

122. (1951) 1 ALL. E.R. 257

123. (1970) LWLR 1424

124. (1898) 2 Q. B. 402

125. (1922) 1 KB 68

126. (1918) 1 KB 68

127. (1987) 4 NWLR (Pt. 67) 797 S.C.

128. (1962) 3 Burr. 1265 at page 1267.

129. (1905) 69 J. P. 296

130. (1924) 1 KB 171

131. (1986) 3 NWLR (Pt. 31) 684

132. (1965) 2 ALL ER. 835; (1966) 1 QB. 380

133. (1931) 2 KB. 215

134. (1949) 1 ALL E.R. 109

135. (1986) 3 NWLR (Pt. 27) 125 C.A.

136. (1986) NWLR (pt. 27) 125 C.A.

137. (1967) 3 ALL E.R. 434

138. Suit No. CAW/81/69 of August, 1969

139. Section 114, 1982 Local Government Government Edict, Niger State.

140. (1916) 1 A.C. 242

141. (1961) ALL. NLR 357

142. (1903) 76 J. P. 447 CA.

143. (1926) 1 KB 160

144. (1980) FNLR 491

145. Unreported Suit No. NSHC/5M/86

146. Unreported suit No. NSHC/103/87

147. (1957) WNLR 113

148. Section 277, 1979 Constitution.

149. Section 13. Fifth Schedule, 1979 Constitution.

CHAPTER VI

ELECTORAL PROCESS UNDER LOCAL GOVERNMENT

> "The system of local government by democratically elected local government councils is under this constitution guaranteed; and accordingly, the Government of every state shall ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils." 150

6.1 LOCAL GOVERNMENT ELECTIONS

The power of a state government over local government elections is limited. The power pertaining to registration of voters and of the procedure relating to local government elections is concurrent to both the State House of Assembly and the National Assembly, which means that in the event of conflict, the National Assembly's enactment prevails.[151] However, local government elections and the registration of voters for purposes of such elections were regulated by the Local Government Edict 1976 and the Local Government Electoral Regulations 1976 made by each state government.

The Federal Electoral Commission has the powers:-

(a) "to organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State and to the membership of the Senate, the House of Representatives and the House of Assembly of each of the states of the federation;

(b) to arrange for the annual examination and auditing of the funds and accounts of political parties, and to publish a report on such examination and audit for public information;

(c) to arrange for the registration of persons qualified to vote and for the maintenance and revision of the register of voters; and

(d) to ensure that the register of voters is prepared and maintained in such form as to facilitate its use for the purpose of elections to local government councils." [152]

A state electoral commission is also established in the constitution. Its main function is to deal with all matters pertaining to elections to local government councils. Federal Electoral Commission may take advice from State Electoral Commission on the compilation of the register in so far as the register of voters is applicable to local elections in that state. Hence before the state Electoral Commission can undertake elections to local government councils, the federal Electoral Commission must have compiled a register of voters to be used for such an election. In CHIEF AKANRO V. LAGOS STATE ELECTORAL COMMISSION, [153] the plaintiff commenced action for a declaration that the defendant is incompetent to organise, undertake and supervise any local government elections in Lagos State as there is no legal register of voters as required by the constitution and an injunction restraining the defendant from organising, undertaking and supervising elections into any local government council in Lagos State until a register of voters is prepared by the Federal Electoral Commission. It was argued that the register of voters prepared by the Federal Electoral Commission for use in the 1979 national elections could validly be used for the state local government elections. It was held that a register of voters compiled under the Electoral Decree, 1977 for use for purposes of election to specified offices (excluding

local government elections) cannot be used for the purposes of local government elections. And there cannot be a democratically elected local government unless and until the Federal Electoral Commission provides a register of voters to be used for local government elections.

The power of a state government over local government elections is also limited with regard to the frameline for such elections and the qualifications and disqualifications for candidates. The state government is not at liberty to make the frameline and the qualifications and disqualifications for candidates more restrictive than are prescribed by the constitution or election to the state House of Assembly. It is constitutionally directed to "ensure that every person who is entitled to vote or be voted for at an election to a House of Assembly shall have the right to vote or be voted for at an election to a local government council." 154

A person shall not be qualified as a candidate to contest local government election unless:

(a) "he has attained the age of 25 years prior to the day of the elections;

(b) being a public officer, (including the current Chairmen, secretaries, councillors of Local Government Council) he has resigned his appointment at the appropriate period;

(c) he is resident in the Local Government Council area in which he is contesting an election for at least twelve months prior to the elections;

(d) he is not a person banned or prohibited from participating in politics in accordance with the Participation in Politics and Elections (Prohibition) Decree, 1987;

(e) he produces evidence of tax payments for a period of three years immediately preceeding the year of elections;

(f) he has been nominated by ten registered voters in the area;

(g) in the case of a candidate contesting as a councillor, he has made a deposit of ₦50.00;

(h) in the case of candidate contesting as a Chairman or vice-chairman of the Local Government Council, he has made a deposit of ₦200.00. [155]

Some of these provisions have been questioned in tribunals, for example, the case of **S. KANDI VS MAL IDRISU A MUSA AND 3 OTHERS**[156] deals with provision (b) above which states that the contestant should have resigned his appointment at the appropriate period.

In that case, the petitioner, Mohammed S. Kandi was one of the candidates who on the 8th day of December, 1990 contested election to the office of the Chairman of Lapai Local Government Council under the platform of Social Democratic Party. The first respondent contested the said election on the platform of National Republican Convention and was declared winner by 2nd respondent. Dissatisfied with the declaration, the petitioner filed a petition questionning the return of the 1st respondent as the Chairman of Lapai Local Government Council on the ground inter alia that:

(a) at the time of election, the 1st respondent was incompetent to stand for the said election being a public officer upto the date of the said election.[157]

.../109.

The Tribunal held among other reasons that the 1st respondent being a public officer was incompetent to stand election held on 8th December, 1990 since evidence was proved to show that he did not resign his appointment and that the petitioner be sworn in as the duly elected Chairman of Lapai Local Government. On appeal, the court held that the lower court erred in law to order that the petitioner be sworn in as duly elected Chairman. The Appeal Court declared the office vacant and ordered National Electoral Commission to conduct a fresh election.

Similarly, in the case of **IBRAHIM LAWAL VS ALHASSAN ISA SAMBORO AND 2 OTHERS**[158] it was held that a person shall not be qualified as a candidate to contest any local government election unless he is ordinarily resident in the ward or constituency in which he is contesting an election for a period of not less than 12 months prior to the date of the election. This is a mandatory provision which a candidate must comply.

The election of a chairman or councillor into Local Government Council can be questioned on the following grounds:

(a) "that the person whose election was questioned was at the time of the election not qualified or was disqualified from being elected as a member of a Local Government Council or;

(b) that the election avoided by corrupt practices or offences against Local Government Election Decree 1987; or

(c) that the respondent was not duly elected by a majority of lawful votes at the election; or

(d) that the petitioner was validly nominated but was unlawfully excluded from the election.[159]

.../110.

Some of these provisions have been questioned in Tribunals for example, the case of **USMAN NDA TSWAYAN VS. ALHAJI ABDULLAHI DALLATU AND 2 OTHERS** [160] deals with provision (a) above which states that the constestant was not qualified or was disqualified from being elected as a member of a local government council. In that case it was held that since the 1st respondent admitted being an ex-convict in 1967, his election as a councillor for Agaie Central III was nullified.

Similarly, in the case of **GATA SALAZA GENU VS. MOHAMMED SAMU MAKIRA AND 2 OTHERS** [161] it was held that in the absence of the admission of a previous conviction by the 1st respondent before the tribunal and without the record of previous conviction in evidence before the tribunal, the petition must fail.

6.2 THE POWERS AND REMOVAL OF LOCAL GOVERNMENT CHAIRMEN AND COUNCILLORS

> "The British role here is to bring to the country all the gains of civilisation by applied sciences (whether in the development of material resources or the eradication of disease etc), with as little interference as possible with native mind, patient explanation of the objects in view will be well rewarded." [162]

This was the first basic instruction to the political officers in Nigeria by Lord Lugard to ensure that they really understood the people who were to benefit from his administration. If administrations fail to understand the community they are to govern, if the administrators feel too proud to come to the level of the governed, then no matter the role and functions assigned to them, they would fail.

The Local Government Edict, 1982,[163] provides that for every local government there shall be composed of democratically elected members. The council is therefore the highest policy making body of the local government. Members of each council thus have the collective responsibility to make decisions and where such responsibility is delegated to any committee, constituted legally, carry total responsibility of actions of such committees. The powers and functions of the council is however, subject to various stipulations as contained in the 1982 Local Government Edict of Niger State and such other directives that may be issued by the State Government from time to time.

It is therefore the collective responsibilities of the council members to :-

(a) "Give their honest and sincere contributions when any matter comes before the council at all times. Cognisance must therefore be given to the interest of the generality of the people when any subject is being discussed. Merit and not partisanship should therefore be the key word that must be at the back of the minds of members while treating any issue in the council;

(b) Recognise that by law, members are all collectively responsible for any policy made by the council;

(c) Expected to satisfy themselves that staff matters and in particular, appointments, promotions and discipline are being dealt with by the appropriate committee without fear or favour.

(d) Keep themselves fully informed of the local government monthly financial position for approved Capital projects. Every member should keep himself informed of where each project is to be sited and why. They should also cause any cases of extravagance or improper expenditure or failure to collect revenue which come to their notice to be investigated. [164]

6.3 THE ROLE OF CHAIRMAN

In Britain, Raymond S.B. Knowles said that " a council Chairman has no executive role in law, nor does he usually in practice play any part in administration although the actual influence which he exercises depends largely upon the inclination, ability and personality of the individual. He represents the council on all important official occasions but his role, strictly is no more than to preside over the meetings of the council. [165]

It is submitted that a chairman does more than those pointed out by Knowles. For instance, the chairman of both the committee and that of the council gives the political direction of his department and that of the council respectively. In the case of NATIONAL DWELLINGS SOCIETY VS. SKYLES,[166] Chitty J., said: "it is the duty of the chairman, and his functions to preserve order and to take care that the proceedings are conducted in a proper manner, and that the sense at the meeting is properly put before the meeting."

It is clear that a chairman is not only expected to perform a ceremonial function. The role and functions of the chairman of local government can be perceived in terms of the key role which he (the chairman) is expected to play in the policy making and implementation processes of local government within the context of the officially prescribed functions and development objectives of the local government.

As the chief executive, the chairman should understand the internal working of the local government as well as the factor within the environment of his organization, and which may constrain or promote the effective planning and implementation of programmes and objectives designed for achieving the developmental objectives of local government.

The duties and powers of the chairman include the following:

(i) "He is the chief Executive of the Local Government and is responsible to the council for the management of the finances of the local government;

(ii) He summons and presides over all meetings of the local government council except those involving a censure motion against him. The approval of the agenda for each meeting and the conduct of the meeting in accordance with the standing orders are therefore his responsibilities;

(iii) He is a member of Emirate/Traditional council. As a representative of the Local Government Council, he should always ensure that any views expressed by him during any meeting of the Emirate/traditional council, are based on the general views of the Local Government Council;

(iv) He presides over the meetings of the finance and general purpose committee. He is therefore responsible for seeing that all financial transactions are carried out in accordance with the various provisions of Financial Memoranda and other directives that may be issued from time to time by the Ministry of Local Government which is now under the office of the State Chief Executive. He is also responsible for the monthly treasury cheques.

(v) He presides over the meetings of security and policy committee. Fixing the time of the meetings and approving the agenda thereof is thus, his responsibility.

(vi) He is a member of the Local Government Joint Account Committee and shall attend its meetings between the Governor and Local Government Chairmen. In these meetings, the Chairman attends as a representative of local government council and shall present only the views of such council;

(vii) He is responsible for checking and ensuring that every payment is justified, hence he needs to approve all expenditures;

(viii) He presides over the Local Government Tenders Board and is therefore responsible for signing contract agreement forms;

(ix) He is responsible for ensuring that decisions of the council or committees as the case may be, are forwarded to the appropriate quarters for implementation. It is also his duty to report back to the council or committees actions taken on such decisions.

(x) He performs other functions that may be assigned to him by the council or the state government.[167]

The effective discharge of a council's business depends on the drive, initiative, calibre, wisdom and experience of the Chairman and the officials.

The Chairman of the council is not just hand-picked for no justifiable reasons or attributable qualities but on undermentioned grounds as stated by Jackson -

> "A good chairman must be experienced in local government, have served a lengthy apprenticeship, know procedure and be aware of precedent, have the welfare of the locality foremost in his mind; appreciate the mixed abilities of his committee members and the degrees of efficiency of his officers, get the best out of each and mould them into an efficient team, maintain good working relationships with his officers between meetings, and realise that his ability as a leader can directly affect the efficiency of his committee." [168]

All supervisory councillors are appointed by the chairman from among members of the council but such appointment shall be subject to the approval of the council.

According to the Niger State Local Government Edict, 1982, every council shall have not less than two and not more than four supervisory councillors.[169] In Chanchaga Local Government area of Niger State, four supervisory councillors were appointed by the incumbent chairman to head the departments of Health, Education, Agriculture and Works respec-

tively. Similarly, the Oyo State Local Government Edict states that: "Every council shall elect not more than four of their members as supervisory councillors and that their elections must be in the same pattern as the procedures laid down and undertaken during the election of the chairman." [170] But there is a slight difference in the mode of electing a councillor in Bendel. The Bendel State Local Government Law, 1980 states that:

"Every Council shall immediately after the election of the chairman of the local government council, elect not less than two and not more than five of their member who shall be designated supervisory councillors." [171]

The duties of a councillor include the followings:-

(i) "He shall attend all meetings of the Local Government Council convened pursuant to the council standing orders and those of its Committees;

(ii) He shall act as a channel between the people and the government. He is therefore responsible for aggregating the wishes and desires of the people of his area and bringing them to the notice of the council;

(iii) He monitors the effect or otherwise of all local government actions at the grass-root. To this end, he is responsible for disseminating information in the area on the activities of the council and moulding opinion of the public towards understanding the difficulties of the council;

(iv) He is indirectly responsible for the implementation of council policies and should assist in ensuring that the local government

decisions are implemented in any department that may be assigned to him.

(v) He shall also ensure that there exist a harmonious working relationship between the entire staff inorder to facilitate efficient delivery of service to the communities.

(vi) He shall perform any other duties which may be assigned to him by the local government." 172

The Councillors can only act to build the council in its corporate personality, but if they are not in the course of their duties and if they are acting ultra-vires or on the frolic notion of their own, the council will not be liable for their actions. This is supported by the case of JOSEPH ONYEKWERE V. OKWULELIE. 173 In this case, the plaintiff a [illegible] councillor of the Umuahia Urban County Council was suspended by a resolution of the council from participating in the activities of the council following some disagreements on the moves by the chairman and few of them to allocate market stalls improperly. The plaintiff disagreed with the discussion in the chairman's house over how certain privilege allocations were to be made. He was rebuked and told by the chairman before he walked out with certain councillors that he would be surprised that "the day market stalls would be allocated by the council, that he would not be present."

Later during an emergency meeting of the council called for the only business of "market development", a resolution was passed to suspend the plaintiff from the council as it was alleged that the plaintiff was in the habit of fighting with his wife in the streets and that his conduct was disgraceful to the council. Hence a decision was taken to expel him and he was accordingly prevented from coming into the council and participating in its deliberations. Infact he was also prevented from drawing his sitting allowances. As a result of this suspension, the plaintiff brought an action in the High Court and it was held that the chairman cannot so act

to deprive the councillor who was chosen by his community to represent their interest. It will therefore be illegal and unconstitutional to deprive the sectional community of their rights in the local area by thus depriving their representative. The court had this to say:

> "As a councillor elected by his ward to the Umuahia County council, the plaintiff not only represents other members of the ward in the councils to whom he owes a duty, but has a private interest as a member of that ward to attend council meetings. If he is illegally prevented from attending such meetings he is perfectly entitled to apply to this court in either of his dual capacities for remedy."

Therefore the only councillors that took this decision were jointly liable and not the council as a whole because their acts were illegal and ultra vires; the council did not either expressly or by any inference direct them so to do; and the council limited the authority of the members to act in accordance with the standing order and within their ostensible authority. Also, councillors are personally liable for their criminal acts as was held in the case of QUEEN V. EZECHI. [174]

6.4 REMOVAL OF CHAIRMEN AND COUNCILLORS

The Chairman of a local government council can be removed from office if during his term of office he tenders a letter of resignation addressed to the Secretary to the local government council who shall transmit that resignation to the State Electoral Commission. The chairman can also be removed from office if he commits an act of gross misconduct; or he is unable to discharge his duties as chairman as a

result of infirmity of mind or body or other cause.[175] Other grounds for the removal of chairman include - incompetence, moral turpitude dishonesty, abuse of office or if he is convicted by a court of competent jurisdiction for an offence punishable by a sentence to a term of imprisonment for six months or more or to a fine of ₦500 or both.[176]

The removal of the chairman is commenced when the Governor sets up a committee of three persons of intergrity to conduct an investigation into the allegations. The holder of the office of the Chairman whose conduct is being investigated shall have the right to defend himself in person or be represented before the committee by a legal practitioner of his choice. Where the committee reports to the council that the allegations have not been proved no further proceedings shall be taken in respect of the matter. But where the report of the committee is that the allegation against the holder of the office of chairman have been proved, then within seven days of the receipt of the report, the council shall consider the report, and if by a resolution of the council supported by not less than two thirds majority of all its members, the report of the committee is adopted, then the holder of the office shall stand removed from office as from the date of adoption of the report. The councillors can also be removed in the same manner as the chairman.

6.5 THE REMOVAL OF ENUGU LOCAL GOVERNMENT CHAIRMAN: A TEST CASE UNDER MILITARY REGIME:

Section 11(1) -(11) of Decree No. 15 of 1989 spelt out the precedure to be followed before a local government chairman could be removed from office by the local government council. Also, section 34 of Decree No.15 of 1989 states:

"Notwithstanding the provisions of this Decree or any other law to the contrary, the President, Commander-in-chief of the Armed Forces may, if he is satisfied that the affairs of a local government are not being managed in the best interest of the community or in a way to strengthen the unity of the people of Nigeria or for any other good cause -

(a) remove the chairman or vice chairman of that local government council from office; or

(b) dissolve the local government council and appoint an Administrator to manage the affairs of the local government until an election to the offices of chairman, vice chairman and councillors for the local government council has been held."

It therefore follows that under a military regime, a governor of a state do not have powers to unilaterally remove from office any chairman of a local government.

In the case of the removal of Enugu local government chairman, a battle of words transpired between the then Governor and the chairman as a result of an objection by the latter to the appointment of an in-law to the governor. The Enugu local government council wanted to operate under the new Federal Government Local Government Guidelines under which the local government is an autonomous third-tier of government. The State Government by its interpretation of the guidelines, however, recruited 245 teachers and deployed them to the Enugu Local Government, but the incumbent chairman rejected the new teachers in the exercise of his executive powers. His ground was that they belonged to a category that the council ought to employ on its own. The then chairman of National Electoral Commission stated that the present corps of local government chairmen and councillors cannot be removed from office by State Governors.

They can only be removed by the provisions of the Electoral Decree, 1987 which requires such officers to be given adequate opportunity to defend themselves of any allegation of wrong doing before a competent court or tribunal. The chairman was removed from office without following the proper procedure. The law, particularly guiding the conduct of elections in Nigeria does not even remotely empower the military to remove any person who has been elected into office. The only law that empowers the government to remove any public officer is Decree 17 of 1984 and that covers civil servants.

The removal of the then Enugu Local Government Chairman was therefore interpreted by a lot of people as a severe blow to the temors experiment in democracy.

6.6 FILLING OF CASUAL VACANCIES

Whenever a casual vacancy occurs among the members of the council, the secretary shall forthwith report the vacancy to the Electoral Commission in writing. The latter shall on receipt of such notice fix a date for elections. But where the casual vacancy occurs within a period of three months within which members are due to retire, the vacancy shall not be filled. However, a person elected to fill a casual vacancy shall hold office untill the date upon which the person in whose place he is elected would ordinarily have retired and he shall then retire.[177]

FOOTNOTES TO CHAPTER VI

150. Section 7(1), 1979 Constitution

151. Item E, Concurrent Legislative List, 1979 Constitution.

152. *Third Schedule, 1979 Constitution.*

153. (1981) INCLR 51.

154. Section 7(4), 1979 Constitution.

155. Section 8, Transition to Civil Rule (Political Programme), Decree, 1987.

156. Mohammed S. Kandi V. Mal. Idrisu A. Musa and 3 Ors. Unreported Suit No. NLEP/NS/SUL/2/90 of 16/9/91.

157. Section 122, 1982: Selected Legislations Relating to the Political Transition Programme Vol.1. pp. 176.

158. Ibrahim Lawal V. Alhassan Isa Sambori and 2 Ors. Unreported Suit No. LGEP/NS/MN/11/91

159. A. H. Kirk - Green: Lord Lugard Political Memoranda, Frank (ass & co, London 1970, p.3, paragraph 9.

160. Usman Nda Tswayan V. Alh. Abdullahi Dallatu & 2 Ors. Unreported Suit No.LGEP/NS/BD/9/91

161. Gata Salaza Genu V. Mohammed Samu Makira & 2 Ors. Unreported Suit No. LGEP/NS/KG/2/91.

162. Section 12, Local Government Edict, 1982, Niger State.

163. Guide to Procedure for Local Government Councils in Niger State, 1988, Government Printer, Minna.

164. A. T. Oyewo: Nigerian Local Government Administrative Practice and Management, p. 64. 1987 Jator Publisher

165. (1984) 3 ch. 159.

166. Guide to Procedure for Local Government Councils in Niger State, 1988, p. 70, Government Printer, Minna.

167. A. T. Oyewo: Nigerian Local Government Administrative Practice and Management, p. 64. 1987 Jator Publisher

168. Section 24(1), Local Government Edict, 1982, Niger State.

169. Section 28(1), Oyo State Local Government Edict, 19876.

170. Section 25(1), Bendel State Local Government Law, 1980.

171. Guide to Procedure for Local Government Councils in Niger State, 1988. P.8, Government Printer, Minna.

172. (1966) 10 ENLR 140.

173. (1962) 1 AU. NLR. 113.

174. Section 22(1), Local Government Law, 1982, Niger State.

175. Section 16(7) Lagos State Local Government Law, 1976.

176. Newswatch Magazine of September 26, 1988, p. 10.

177. Section 20, Local Government Edict, 1982, Niger State.

CHAPTER VII

POSTMORTEM EXAMINATION OF LOCAL GOVERNMENT SYSTEM INTRODUCED IN 1976

7.1 LOCAL GOVERNMENT SINCE 1976:

The 1976 nation wide Local government reforms introduced by the Military regime and entrenched in the 1979 Constitution has not achieved its main objectives in terms of providing the necessary comfort for the common man. The reform recognised for the first time Local Government as a third tier of government and made provisions for the establishment of 299 Local Government authorities in the country as effective means for promoting good government and rapid socio-economic development at the grassroot level. In the words of Brigadier Shehu M. Yar'Adua as he then was, the "Federal Military Government has therefore decided to recognise Local Governments as the Third tier of government activity in the nation. Local Government should do precisely what the words government implies, i.e. governing at the grassroots or Local level." Each State Government was made to promulgate a Local Government edict prepared with reference to a model edict drafted by the Federal Military Government. It has also been shown that for the first time the Local Government system as a Third tier of government has been entrenched in our constitution. The result is that Local Government is thus removed from the exclusive ambit of the State Government. The reason being that under the 1976 edict, Local Governments clearly operated and even existed almost entirely at the pleasure of the State Government. The State Executive Council retained authority to alter (through amending or revoking any edict or institution) the Status of a Local Government or the composition of its Council in any way, to add to, take away from or impose any conditions upon

the exercise of any of the functions of Local Government. For instance, a Local government edict states that "Every Chairman of a Council shall render his services to that Council on such basis as the Military Governor may determine".178 The edict further states that the salary and allowances to be paid to Local Government Council Chairman are subject to the Governor's discretionary determination. Such provisions have been clearly designed and adopted for the purpose of encouraging Chairmen to view themselves as responsible and loyal to the State Governor rather than to the Council.

To ensure that the Local Government Councils can stand on their own, the Federal Government provided financial support Recognising that the financial resources available to states and Local authorities for financing Local Government Services are unevenly distributed in relation to needs, and that it is unlikely that many Local Government authorities would be able to meet more than a third of their monetary requirements from their own resources, the Federal Government accepted that considerable government financial assistance was required. Accordingly, the Federal Government decided to "Write off" all Local Governments debts to the State Governments and thereafter made provisions for the yearly subvention to be paid by both the Federal and State Governments.

The Federal Military Government put up efforts to ensure the success of the New Local Government system in the Country, but it was a woeful failure during the Civilian Administration. The reasons for this failure were:

(i) There was the gross indiscipline on the part of those who held the reins of government at the Federal, State and Local levels. This led to the demise of the Civilian Administration during the second republic. Local Government Councils were no exceptions to the general indiscipline.

(ii) Secondly, the experience during the second republic has shown that channelling money meant for Local Governments through the State Governments does not help the financial position of Local Councils to discharge their responsibilities towards their respective Local communities. State Governments had diverted grants meant for local Governments.

It is therefore suggested that a permanent but independent Local Government Commission like the Law Reform Commission, should be set up by the Federal Government which will issue reports and suggestions on intractable problems facing Local Government Councils which will form the basic future modification of a Local Government system.

7.2 CURRENT DEVELOPMENTS OF LOCAL GOVERNMENT IN NIGERIA

The present Military regime introduced new innovation to improvement of Local Government system in Nigeria.

Of recent, the Federal Military Government has evolved the system of direct funding to Local Government authorities. This is a long awaited innovation. Formerly, the State Governments diverted funds meant for Local authorities for its use thereby starving the Local Governments of funds.

Also, the Federal Government has increased the number of Local Government by 149 wards on Federal Constituency formular. This would keep the Government to govern its people closer at the grassroot level.

Thirdly, Ministry for Local Government all over the States of the Federation were phased out and consequently made as a department under the Military Governor's Office. The decision to phase out Ministry for Local Government were to the following:

"That the functions performed by the Ministry for Local Government, in some cases, with minor modifications, be performed by the State Governor's Office with some advantage;

easy access to the State Chief Executive, quicker monitoring of developments at the Local level, proper co-ordination of projects and programmes, reduction of bureaucratic practices and the economic utilization of experienced personnel through sharing in the pool in the Governor's Office" [179]

7.3 CONSTRAINTS HINDERING EFFECTIVE PERFORMANCE OF LOCAL GOVERNMENT

Several factors both externally and internally motivated, combine to act as clog in the wheel of efficient and effective performance of Local Government in Nigeria. These factors range from structural organisation problems, adoption of outmoded management principles and techniques, financial mismanagement to under utilization of human and natural resources.

The 1976 Local Government Reforms stipulate as one of the criteria for the creation of Local Government a population range of between 150,000 to 800,000. This is seen as too large a size for Local Government and an anti-thesis of the philosophy of bringing development closer to the people. When Local Government is too large in size and with limited resources, resource mobilization becomes difficult, uneven development takes place and effective and rapid developmental process is hindered. Only smaller Local Governments can effectively bring government closer to the citizen and serve as instruments of resources mobilization.

Financial problems at Local level manifest themselves in several ways:

(i) Delay in the realisation of the statutory allocations:-
Although it is stated that the Federal Government made a statutory allocation of over ₦1.08 billion to the Local Government between 1976 and 1980, yet the Local Governments still suffer from crippling financial situation. There are a number of reasons for this. First the statutory allocation from the Federal Government through the State to the Local Government and

specifically meant for the execution of capital projects by the Local Government are to be passed on the Local Governments by the state Governments. While the allocations are released to the State Governments on monthly basis, the State Governments disbursed the allocations to the Local Government on quarterly basis and in some cases, nothing is passed on to the Local Governments at all. By irregular release of these grants, the Local Governments are hanstrung in rendering appropriate services and enhancing on realistic and meaningful developmental programmes.

Furthermore, virtually all the State Governments are guilty of occassionally hijacking Local Government allocations and diverting them to other uses. They are also guilty of failure to contribute their own share of funding to the Local Government.

(ii) Lack of proper maintainance sources of Local Government revenue:- Tenement rates and liquor licences, mortor packs licences etc are major sources of internally generated revenue by the Local Councils, particularly the metropolitan Councils. Residents in various Local Government are usually served with notices to pay arrears of tenement, but the response has been poor. Coupled with this is the absence of effective instrument to aid the collection of these rates. Furthermore, property assesment by the Local Governments are not comprehensive enough because of the glaring absence of professionally qualified valuers.

It is therefore suggested that since there are many revenue collectors, they should be made to constantly call on revenue defaulters and appropriate action taken against them through the State Ministry of Justice.

(iii) Local Governments also exhibit inability to tap better revenue yielding sources available to them. Such revenue sources include licensing, supervision and regulating of bakery houses, eating houses and laundries . Bakeries spring from time to time under the gaze of the Local Government Officials and yet nothing is often done to make these bakery owners pay their dues. It is therefore suggested that Local Governments should not rely solely on the Federal Government allocation and of course aids from the State. Other sources of revenue generating should be tapped.

(iv) Since the establishment of elected Local Government Councils in the country, there have been numerous and proven cases of financial mismanagement, reckless embezzlement of public funds by both the Officials and elected members. This corrupt behaviour of the functionaries of local governments has constituted in no small measure to the poor performance of the Local Governments in the country.

(v) Another crippling effect on the Local Government performance can be attributed to the ignorance of both the Local Politicians and appointed officials. In many case the Councillors who are expected to supervise and control the financial activities of Local Councils are either ignorant of what their responsibilities are or are unwilling to pay attention to them. The problem is further aggravated by the fact that many of the officials that handle finances in the Local ... poorly educated and poorly trained, consequently ...nce of their

It is therefore suggested that only qualified educated officials should be appointed/elected as Local Government officials, and quarterly auditing of Local Government accounts be conducted to check excessive embezzlement and culprits be prosecuted.

(vi) Because of Political interference, Local Governments are bedevilled with gross indiscipline of Local Government staff. Those who are known to hold different political view from those of the establishment are victimised while sycophants and praise singers are glorified. 180

It is submitted that political interference into Local Government affairs cannot be totally stopped, the reason being that members are elected on party basis and such members are often than not find it impossible to bite the fingers that fed them.

Given these circumstances, the general level of managerial efficiency in Local Government cannot be expected to be particularly high.

7.4 OTHER RECOMMENDATIONS:

In the light of the above problems and suggestions in order for the various Local Government Councils to achieve the aims for which they are established, the following further suggestions are recommended :-

(1) All Local Governments should make conscious effort to decentralise their activities to the area offices so as to bring government closer to the people.

(ii) Development plans should include and interpret all programmes to bring even development to all parts of the country.

(iii) The Federal Government should be more concern with bringing minimum level of development to all Local Governments in Nigeria by designing them as agencies of development.

(iv) The concurrent list of the 1979 Constitution be reviewed with a view to allowing Local Government to participate meaningfully in agriculture, housing, mines and power, water supply, industrial and scientific researches etc.

(v) The Federal Directorate of Foods, Roads and Rural Infrastructure should be integrated with the Local Government system and maintained. The functions of the Directorate which is aimed at transfering the Rural areas of the country through the concept of "Participatory Development" is purely a function which should be left for individual Local Government Council to perform. [181] Therefore deliberate efforts must be made at the State Government level to ensure that no parastatals are created to take over the functions of Local Government, because such a step will contradict the spirit and letter of the 1976 Local Government reform.

All the above recommendations are necessary because Local Government carry the greatest burden of the development process (defined as socio-economic improvement and progress towards nation-building).

FOOTNOTES TO CHAPTER VII

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