

THE LOCAL GOVERNMENT SYSTEM AND FEDERAL/STATE LEGISLATIVE COMPETENCE UNDER THE 1999 CONSTITUTION*

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Introduction

The 1999 Constitution of Nigeria provides what may be regarded as basic and rather comprehensive legal framework for true federalism. This Constitution has improved on the 1979 Constitution of Nigeria in seeking to promote federalism both in its classical formulation and as a tool for achieving the much needed unity in diversity¹. The features include, amongst others, a Supreme Written Constitution, a pre-determined distribution of authority between Federal and State governments, a provision for an amending process with the active participation of both levels of government, some measure of financial autonomy for States and the judiciary exercising powers of judicial review². While providing for separation of powers among the three arms of Government – the Legislature, the Executive and the Judiciary, the Constitution also provides for division of powers among the Federal, State and, to a lesser extent, the Local Governments³. The Constitution thus provides for three tiers of Government with fairly well-defined functions and powers. Unfortunately, it would appear that the constitutional provisions on Local Government System are less copious and have given rise to conflicts, confusion and questions as to the limit of legislative competence of the State or Federal legislature. The recent decision of the Supreme Court in *Attorney-General of Abia State & Ors. v. Attorney-General of the Federation*⁴ bears eloquent testimony to this.

Admittedly, the Constitution, like any other human document, is not perfect and, to be able to examine this topic clearly, it is intended first, to take an excursion into the recent past history of Local Government System in Nigeria as a foundation for our interpretation of the provisions of the Constitution on this subject. Thereafter this contribution will examine the provisions on the establishment of Local Government system, creation of new Local Government Areas and boundary adjustments, tenure of Chairmen and Councilors and other related matters under the 1999 Constitution.

Brief History of Local Government

One noticeable feature of our constitutional development in the past was the attempt by each region to preserve its autonomy with little or no attention given to Local Government relationship within the overall political system of government. One consequence of this, was that local government was subsumed under the State or Region and regarded merely as one of the functions of a State or Regional government with the latter encroaching into what would normally have been the exclusive preserve of Local Government.⁵ Needless to say that as a system of Government, Local Government was not truly recognized under our political arrangement until the 1976 Local Government reform. The latter resulted in the

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¹ K.C. Wheare. Federal Government, 4th Edn., Oxford, London, 1963, Nwabueze, A Constitutional History of Nigeria, Longman 1982 Elazer, "Federalism" in International Encyclopaedia of the Social Sciences (1968) vol.vol. 5, p. 353.

² See sections 1(1), 4,5,6,9, 162 and 4(8) of the Constitution.

³ See Sections 4, 5, 6, 7 and the Fourth Schedule to the Constitution.

⁴ (2002) 6 N.W.L.R. (pt. 763) p. 264.

⁵ Akande, "The future of Federalism in Nigeria" in Aguda, T.A. (edited) Nigerian Current Legal Problems, Vol. 1, Nigerian Institute of Advanced Legal Studies, Lagos, 1985, p. 67 -68; Akande, Introduction to the Nigerian Constitution 1979, Sweet & Maxwell, London, 1982, p. 7 – 8..

Constitutional recognition of the Local Government system as a third tier of government under the 1979 Constitution⁶.

The 1976 Local Government Reform was a national exercise the essential objectives of which were uniformity and effectiveness⁷. It was designed to produce efficiency in the administration of local governments. In addition, it was, amongst others, to effect a constitutionally uniform establishment procedure, composition, functions, structure and finance of local government councils as a third tier of Government below the Federal and State Governments. To realize the objective of uniformity of Local Government administration in the country as a goal of the national Reform exercise, the Federal Government provided the uniform Guidelines on which State legislation for Local Governments were based. Knowing that it was a military Government at that time, it is clear that State legislation on local Government could not deviate from those Guidelines as we shall soon demonstrate.

Government intention to change the status of local Government was clear from the following speech by the then Chief of Staff, Supreme Headquarters –

“The defects of previous Local Government systems are too well known to deserve further elaboration here. Local Governments have, over the years, suffered from whittling down of their powers. The State Governments have continued to encroach upon what would normally have been the exclusive preserves of Local Government. Lack of adequate funds and appropriate institutions had continued to make Local Government ineffective and ineffectual. Moreover, the staffing arrangements to ensure a virile local government system had been inadequate. Excessive politicking had made even modest progress impossible. Consequently, there has been a divorce between the people and government institutions at their most basic levels..... The Federal Military Government has therefore decided to recognize Local Government as the third tier of governmental activity in the nation”⁸.

To correct these defects highlighted above, the Supreme Military Council recognized the Local Government as the third tier of government in this country. To enforce obedience on the States, the Federal Government not only prepared a Model Edict and Guidelines to which all State Edicts must conform but also insisted that, in exceptional cases, where deviation from the guidelines and the standard edict was necessary, the State concerned must obtain a clearance from the Federal Government⁹. This was essential in order to achieve uniformity in the local government system in the country¹⁰.

In accordance with the Federal Executive Order, the law-making bodies of the various States created two hundred and ninety-nine Local Government Council areas, which number was by amendment authorized by the Federal Government, later

⁶ The term “tier” was used in the Guidelines to Local Government Reform to refer to a set of Local Government Authorities with their own identity, powers and sources of revenue under State legislation and with functions for which they were responsible to the State.

⁷ For a fuller account, see R.O. Igwebike, “The Nigerian Constitution on Local Government Councils” (1986) vol. 1, No. 1, Calabar Law Journal, p. 32; See also Ikelegbe, A.O. “Local Government Legislation in Nigeria: Political Consequences, Options and Dilemma” (1993) Nigerian Journal of Legislation, Vol.1 p. 82 –95.

⁸ See Guidelines to Local Government Reform 1976.

⁹ For example, Kwara State obtained such clearance under the arrangement.

¹⁰ It is true that the Government directive was not formalized in a Decree. But bearing in mind that it was a military regime, the executive directive was an order with the force of law which no State could flout at will. See also James Read “The New Constitution of Nigeria (1979), “The Washington Model”, (1979) Journal of African Law, vol. 23, No. 2, p. 131; T.A. Aguda, “The Legal Implications of the Creation of more States in Nigeria” (Paper presented at the National Conference on Creation of States in Nigeria, Ile-Ife, 1981).

increased to three hundred and one Council areas. Although the Guidelines for the Local Government Reform made allowance for the creation of subordinate councils, yet it was made abundantly clear that only the three hundred and one councils created by the States, should be regarded as the third tier of government. Thus, the intention and authority of the Supreme Military Council to carve out identifiable local Authorities, through State legislations as the third tier of government was abundantly clear. On this point, the Chief of Staff, Supreme Headquarters said:

“The implications of the guidelines will in fact mean that a fundamental change in the political structure of this country will be brought about. For, with these reforms, a new level of government will be added below the Federal and State Government levels. In fact, thought is being given to guaranteeing the statutory nature of this level of government by embodying it in the new constitution”.

To guarantee the statutory status of these three hundred and one Local Government Authorities, as a third tier of Government, the Constitution Drafting Committee (CDC) collected a list of Local Government Council Areas thus created and embodied them in the First Schedule to the 1979 Constitution. The overall intention was to protect the third tier of government and make the local governments function effectively and efficiently.

Thus, the 1976 Local Government reform paved the way for the first all important recognition and guarantee of the Local Government system as the third tier of government under the 1979 Constitution¹¹.

Local Government System under the 1999 Constitution

The foregoing brief historical background was necessary to enable us appreciate the rationale and intention for the provisions on local government system under the 1999 Constitution.

Admittedly, there were certain inadequacies under the provisions of the 1979 Constitution, which gave rise to certain interpretational problems before the courts. For instance, the Constitution expressly named all the States of the Federation in section 3(1) but merely included the list of existing Local Government Areas in the second column of Part I of the First Schedule to the Constitution. The mere reference to them as “area” in section 3(2) of the Constitution gave rise to the question whether the Constitution meant to recognize them as local Government Areas or just geographical areas merely descriptive of State boundaries. A closely related problem was also whether the areas in the second column of Part I of the First Schedule to the Constitution fixed local government areas which could only be changed through constitutional amendment.¹²

A second major problem was the failure to provide expressly for a State power to create new Local Governments. The absence of an express provision in that regard ignited much controversy on the power of a State to create new Local Government Areas under the 1979 Constitution¹³. Luckily the 1999 Constitution has

¹¹ A Sub-Committee of the Constitution Drafting Committee (C.D.C.) had recommended that States should be stopped from cavalierly and whimsically tinkering with the local government organs, dissolving them at will, and setting up some official as Sole Administrator.

¹² Balogun v. Attorney-General, Lagos State (1981) I.N.C.L.R. 31.

¹³ See T. Akande, Introduction to the Nigerian Constitution 1979, Sweet & Maxwell, London, 1982, p. 3 – 8.

remedied these deficiencies¹⁴ but not without containing other provisions also susceptible as sources of potential conflict in the federal arrangement.

Establishment of Local Government System

Section 3(6) of the Constitution which provides expressly for thirty-six States and a Federal Capital Territory (by their existing names) also expressly provides for seven hundred and sixty-eight existing local government areas named in the second column of Part I of the First Schedule to the Constitution thus laying to rest the earlier controversy on this subject under the 1979 Constitution.

Section 7 of the 1999 Constitution is very important for this purpose as to be reproduced hereunder. It provides:

- (1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils.
- (2) The person authorized 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.
- (3) It shall be the duty of a 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.
- (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.”

Under subsection (1) of this section the Constitution **guarantees** a system of local government by democratically elected local government councils because they were already in existence under the relevant existing laws¹⁵. The Constitution lays the responsibility for ensuring the continuous existence of this system on the States under their laws. The reference to section 8 under this section is important as it points to the legislative authority of the States to create new local government areas and boundary adjustments of existing local government areas where necessary.

¹⁴ Section 3(6) of the Constitution expressly provides for 768 Local Government Areas as named in the second column of Part I of the First Schedule to the Constitution. Section 8(3) expressly empowers the House of Assembly of a State to create New Local Government Areas by a Law to that effect.

¹⁵ See for example, the Local Government (Basic Constitutional and Transitional Provisions) Decree No. 36, 1998.

Section 7 has to be read together with section 4 of the Constitution which contains express provisions in respect of the division of legislative powers between the Federal and State legislative authorities – the National Assembly and State Houses of Assembly.

The legislative power of the National Assembly is limited to the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution and only the National Assembly can legislate on these matters and those that are incidental or supplementary to them under item 68 thereof. This does not include local government.

On the other hand, both the National Assembly and the State Houses of Assembly may make laws on matters contained in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to the Constitution. While this does not directly include Local Government as an item, paragraphs 11 and 12 thereof were recently relied upon (albeit erroneously) by the National Assembly to legislate on local government matters including the extension of the tenure of Local Government Chairmen in the country¹⁶. The paragraphs provide:

- “11. The National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a local government council.
12. Nothing in paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to election to a local government council in addition to but not inconsistent with any law made by the National Assembly”.

It is clear from this provision that any law of the National Assembly validly enacted on a subject properly falling within the concurrent legislative list would override a State law on the same subject. This is made even more imperative by the express provision of section 4(5) of the Constitution¹⁷ otherwise referred to as the doctrine of covering the field. However, a careful perusal of item 11 would reveal that it limits the legislative competence of the National Assembly only to purely procedural matters on local government elections. This interpretation finds support in item 22 of the Exclusive Legislative List which specifically excludes the National Assembly from making any substantive law for election to local government councils or any office in such councils¹⁸.

Accordingly, the Supreme Court held, rightly in our view, in the recent case of *Attorney-General of Abia State and others v. Attorney-General of the Federation (supra)* that the above paragraphs could not be relied on by the National Assembly to make provisions in the Electoral Act¹⁹ for Local Government elections, an area which was expressly reserved for the States by virtue of sections 4, 7, & 8 of the Constitution. Reliance was also placed by the court on section 197 which created the State

¹⁶ *Attorney-General of Abia State & Ors. v. Attorney-General of the Federation (supra)*.

¹⁷ “If any law enacted by the House of Assembly of a State is inconsistent with that validly made by the National Assembly the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void” (Section 4(5); *Girenbe v. Bornu Local Authority* (1961) 1 All N.L.R. 469, *Musa v. INEC* (2002) 11 N.W.L.R. (Pt. 778) 223 C.A. For the criteria for determining inconsistency as between a Federal and a State Law in other Jurisdictions under the doctrine of covering the field, see *Australian Boot Trade Employer’s Federation v. Whybrow* (1914) 10 C.L.R. 266; *Victoria v. Commonwealth* (1937) 58 C.L.R. 618, 630 “when a State Law, if valid, would alter, impair or detract from the operation of a Law of the Commonwealth Parliament, then to that extent it is invalid. Moreover, if it appears from the terms, the nature or the subject matter of a Federal enactment that it was intended as a complete enactment of the law governing a particular matter or set of rights and duties, then for a State Law to regulate or apply to the same matter or relation is regarded as a detraction from the full operation of the Commonwealth law and so is inconsistent” (Per Dixon J.).

¹⁸ See also section 7(4) of the Constitution assigning to a State the responsibility of ensuring that all eligible voters are given opportunity to vote at Local Government Elections.

¹⁹ Electoral Act 2001.

Independent National Electoral Commission whose functions²⁰ include the conduct of election to local government councils in the State.

Tenure of Local Government Chairmen

Specifically, the argument that the National Assembly could legislate on the tenure of the Local Government Chairmen was rejected by the Supreme Court in this recent case. Section 7 of the Constitution did not expressly provide for tenure to be included in State law on Local Government. However, the law under which the local government councils were established provided for their tenure – Local Government (Basic Constitutional and Transitional Provisions) Decree²¹ of 1998. Unfortunately, that law had been repealed by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree²², 1999, and it was sought to argue that the National Assembly could legislate on local government as an incidental matter under item 68 of the Exclusive Legislative list²³. The Supreme Court rejected this argument. It was held that the power to establish local government under section 7 of the Constitution also implies the power on the part of the State Legislature to make provision for tenure of the office holders particularly where, in this case, the Constitution is silent on tenure. Secondly, under section 4 of the Constitution the State legislature is empowered to make laws on any matter not in the Exclusive Legislative List. Since tenure of Local Government Chairmen was neither in the Exclusive nor Concurrent Legislative Lists, it was therefore a residual matter on which the State Legislature is entitled to make law exclusive of the National Assembly. It is submitted that this decision is authority for the position that the implication and cumulative effect of section 4 (6) & (7) of the constitution is to vest exclusive legislative jurisdiction on a State House of Assembly in “residual matters” which are neither on the Exclusive nor the Concurrent Legislative List set out under the appropriate Schedule to the Constitution. It is unfortunate however, that some Houses of Assembly failed to exercise this jurisdiction to extend the tenure of the elected Local Government Councilors when the opportunity arose recently but instead legislated for the appointment of Transitional Councils.

Appointment of Local Government Transitional Councils

Pursuant to the legislative powers of the State under sections 4 and 7 of the Constitution, some States Houses of Assembly made laws for the establishment of a Transitional Council to run the affairs of each Local Government pending the elections into the Councils and the swearing-in of democratically elected members²⁴. The reason given for this was the inability to hold elections for elected members to replace those whose tenure had expired because the voters Register had not been reviewed. The Local Governments were not responsible for this failure. Rather it was the Federal and State Governments that were accountable for this abysmal failure. The appointment of Transitional Councils was therefore simply the product of “excessive politicking” in favour of the State Governments, a situation which was clearly oppressive of the Local Government System.

It is submitted that the appointment of Local Government Transitional Councils for each State Government is unconstitutional being a flagrant breach of section 7 of the

²⁰ See Part II, items 3 & 4, Third Schedule to the Constitution.

²¹ No. 36 of 1998.

²² No. 63 of 1999.

²³ This was the argument of the Solicitor-General of the Federation.

²⁴ See for example the Local Government (Amendment) Law, 2002 of Edo State (section 3 amending section 10 of the Principal Law).

Constitution. That section guarantees only **democratically elected local Government Councils** and not undemocratic Transitional Councils. The Constitution neither makes provision for nor contemplates this kind of arrangement. Furthermore, the mode of their selection and appointment cannot by any stretch of imagination fall within the definition of democracy as provided by the Constitution. It is strange that the law-makers could chose to imitate a similar exercise under a former Military Regime and adopt it hook, line and sinker under our democratic system. Nothing can justify this under the present democracy. Accordingly, the purported exercise of its legislative authority under section 4 to establish these Transitional Councils is inconsistent with the provisions of section 7 of the Constitution and therefore null and void²⁵.

In the absence of elections as prescribed under the existing law, it is submitted that the best option in accord with section 7 of the Constitution was for the State legislatures to have extended the tenure of the elected councilors "until their elected successors in office take the oaths of office" and this would have been perfectly constitutional²⁶. It is a pity that this issue was not specifically raised in the court which would have had opportunity to pronounce on it. But it is interesting that Supreme Court held *obiter* that only the State Legislature had the power to increase or otherwise alter the tenure of elected members of the Local Government Councils.

However, to forestall a recurrence of this problem, it is suggested that the tenure of Local Government Councilors should be extended to Four years or to terminate with State and Federal tenures, so that both Federal, State and Local Government elections could be conducted the same year. If this is done there will be no failure on the part of State/Federal authorities to revise the Voters Register.

Creation of New Local Government Areas and Boundary Adjustments

Section 8 of the Constitution expressly gives power to a State House of Assembly to create new Local Government Areas under its laws. The procedure is well laid down in the section. Similar powers are also vested in the State Legislature for the purpose of boundary adjustment of any existing Local Government area with the procedure clearly outlined.

However, in the spirit of cooperative federalism, section 8(5) and (6) enacts the involvement of the National Assembly in the process. Under subsection 5 the National Assembly is empowered by an Act to make consequential provisions with respect to the names and headquarters of the Local Government Areas as provided in section 3 and Part II of the First Schedule to the Constitution. This is not a constitutional amendment as such and therefore will not attract the procedure laid down in section 9(2) of the Constitution. Indeed, this is expressly excluded by the provisions of section 9(2) aforesaid. Section 8(6) enjoins the relevant State Legislature to make adequate returns to the National Assembly to enable it enact the Act as prescribed under section 8(5). It is submitted that it is mandatory on the National Assembly to act under section 8(5) once the State legislature submits adequate returns under section 8(6) unless the exercise by the State is a violation of the Constitution. However, there is need for the National Assembly to provide uniform guidelines for all the States in this matter through an Act or else, every City may be turned to a Local Government Area!

Power to Suspend Local Government Chairmen

In the case of Edo State for instance, section 20(1)(b) of the Local Government Law, 2000 vests power on the State Governor to suspend any Local Government Council Chairman where he is "satisfied that the Chairman of a local Government Council is not discharging the Council's functions under this law in a manner conducive to the welfare of the inhabitants of the area of its authority as a whole....."

²⁵ By virtue of section 1(3) of the Constitution.

²⁶ Only two States in the Federation took this part of honour under the Constitution.

The effect of this provision is to confer very wide discretionary powers on the State Governor²⁷. Obviously, the provision appears to be lifted from a previous military enactment on the subject²⁸ and therefore ought not to be allowed in this present democratic dispensation. Such discretion had caused a lot of problems leading to the eventual collapse of the First Republic as revealed in the case of *Adegbenro v. Akintola*²⁹. In that case, while interpreting section 33(10) of the Constitution of the defunct Western Nigeria which empowered the Governor to remove the Premier if “it appears to him that the premier no longer commands the support of a majority of the House of Assembly” the Judicial Committee of the Privy Council held that by the words “it appears to him”, the legislature intended that the judgement as to whether the premier no longer commanded the support of a majority of the House was to be left to the Governor’s assessment without any limitation as to the material on which he was to base his judgment or the contacts to which he might resort for the purpose. Accordingly, it was held that the Governor could remove the premier from office under the provision without a prior decision or resolution on the floor of the House to the effect that the Premier no longer commanded the support of a majority of the House.

This provision also runs counter to the principle of division of powers among the three tiers of government recognized under the Constitution and should be expunged from the law as unconstitutional. A situation where a Chief Executive of one tier of Government is given wide discretionary powers to suspend an elected Chief Executive of another tier of Government and to eventually remove him from office is not only alarming but also violently violative of any known principle of true Federalism. The provision is tantamount to abuse of legislative authority. It is submitted that the provisions for impeachment of an erring Chairman³⁰ and that for his recall, by his Constituency³¹, are sufficient to check possible excesses or faults on his part.

Local Government Finance

Section 162 of the Constitution is to be read together with section 7(6) which expressly grants legislative powers to both the National Assembly and States Houses of Assembly to make laws in respect of statutory allocation of public revenue to Local Government Councils. The section makes provisions for financial allocation from the Federation Account to the local government. Subsection 3 thereof provides that any amount standing to the credit of the Federation Account shall be distributed among the three tiers of government. The terms and manner of distribution are to be prescribed by the National Assembly. Under subsection (5) the amount standing to the credit of Local Government Councils in the Federation Account shall be allocated to the States for the benefit of their Local Government Councils on such terms and in such member as may be prescribed by the National Assembly. Thus, such Allocation cannot be made directly to the Local Government Councils but through the States. This is in consonance with section 7 of the Constitution which empowers the State to make laws on local government finance.

Under section 162(6) each State shall maintain a special account called “State Joint Local Government Account” into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State. Under subsection (7) each State shall pay to Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.

²⁷ This appears to go beyond supervision by the State Government as envisaged by the Constitution.

²⁸ See, for example, the Local Government (Basic Constitutional and Transitional Provisions) Act Cap. 213, Laws of the Federation of Nigeria, 1990 (section 34), (formerly Decree No. 15, 1989).

²⁹ (1962) 1 All N.L.R. 465.

³⁰ Section 19 of the Law.

³¹ Section 20 of the Law.

The involvement of the National Assembly in prescribing the manner of distribution of public revenue to the Local Government would help secure uniformity in such distribution among the Local Governments in the Federation and this is desirable. By subsection (8) the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State. Thus, the Constitution ensures adequate financial provisions for the local government councils while giving the responsibility for the disbursements to the States.

However, this is clearly at variance with the case which was being made for direct Federal allocation to the Local Government Councils from the Federation Account. Such argument was based on the need for a greater measure of financial autonomy for Local Government Councils especially with the enhanced recognition of the Local Government System as a third tier of Government under the Constitution. Secondly, proponents also blamed some State Governments for unnecessary delay in releasing this allocation to the Local Government Councils and, in some cases, it was alleged that the total allocation never reached the Councils. On the other hand, opponents of this position have argued that a direct allocation to the Councils from the Federation Account would undermine the autonomy of the States and this could not have been the intention of the framers of the Constitution. It has also been argued that this would detract from the supervisory role of the States over the Councils as envisaged under the Constitution.

Both arguments are plausible but they need to be considered in their proper perspectives. Truly, the Local Government System cannot be entirely independent of State supervision or control. This is evident from the relevant Constitutional provisions considered as a whole. But it is submitted that the balance of convenience in respect of the argument for direct Federal allocation to Local Government Councils is in favour of the latter. A State Government does not lose anything by such allocation bearing in mind that there are other important areas of control/supervision including the share of the Councils in the State revenue. It is therefore desirable to amend section 162 of the Constitution to allow for direct Federal allocation to the Local Government Councils to enhance swifter and more effective performance of their functions for the benefit of the people at the grassroots.

There are other sources of finance for the Local Government Councils resulting from the proper performance of their constitutional functions³². Unfortunately, the impression has often been created that independence for the local governments is only possible through greater financial reliance on the grants from the Federal Government but it is suggested that Councils should enhance their financial autonomy through self-generated revenue from these other sources.

Investigation of Local Government Affairs

One area in which both the State and Federal Legislatures appear to have concurrent powers over Local Government affairs is in respect of investigation. Section 88 of the Constitution confers on the National Assembly power by resolution published in its journal or in the Official Gazette to direct or cause to be directed an investigation into:-

- “(a) any matter or thing with respect to which it has power to make laws;
and
- (b) the conduct of affairs of any person, authority, Ministry or government department charged, or intended to be charged with the duty of or responsibility for –

³² These are spelt out in the Fourth Schedule to the 1999 Constitution and, in the various States Local Government Laws (see Part X1 of the Edo State Law, for example).

- (i) executing or administering laws enacted by the National Assembly, and
 - (i) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.
- (2) The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to -
- (a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and
 - (b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

Similar power is conferred on the House of Assembly of a State under section 128 of the Constitution³³. Thus, both the National and State Legislatures within their legislative competence, may investigate the affairs of a Local Government Council, for instance, in respect of the use of the statutory allocation of revenue to it or. to expose corruption, inefficiency or waste in the local government. However, it is submitted that investigation by both Legislatures cannot be carried out simultaneously. Accordingly, where the National Assembly is involved in such investigation, the State House of Assembly cannot interfere and *vice versa* in the best interest of the spirit of cooperative federalism.

It is to be noted that the power of investigation here granted by the Constitution is greatly circumscribed. It must be exercised for the purposes enumerated in the section – “within its legislative competence or in the disbursement or administration of funds appropriated by it.” Any purported exercise of power outside this scope will be unconstitutional, null and void.³⁴

Conclusion

The result of the foregoing assessment of the legislative competence of the State and Federal Legislatures in respect of the Local Government System in Nigeria under the 1999 Constitution may be summarised as follows:

1. There is clear provision for division of legislative powers between the State and Federal Legislatures as much as it is politically and legally expedient. To this extent each legislature is autonomous within its sphere of influence. .
2. There are also areas of concurrent legislative powers recognized under the Constitution where both Federal and State Legislatures may exercise authority but with the Federal authority being superior where they address the same subject. This is supported by the “doctrine of covering the field”.
3. In the case of supervision of Local Governments specifically, the Constitution vests supervisory authority on the States with the Federal Government exercising only a monitoring authority where, applicable.
4. The purpose of these provisions is to foster cooperative federalism with full participation of all tiers of government especially in Nigeria where promotion of unity in diversity has been one of the primary purposes of our constitutional arrangements.
5. There is need to amend section 162 of the Constitution to allow for direct financial allocation to Local Government Councils from the Federation Account for the plausible reasons already proffered.

³³ See also sections 78 and 79 of the Edo State Local Government Law 2000.

³⁴ Tony Momoh v. Senate (1981) 1 N.C.L.R. 105.