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**SAFEGUARDING DEMOCRATICALLY ELECTED LOCAL
GOVERNMENT COUNCILS IN NIGERIA FROM ABUSE**

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Abstract

Nigeria is a country that practices constitutional democracy. The 1999 Constitution (As Amended) being a fundamental law, prevails over other inconsistent legislations. The country is a geographical entity divided into 36 states. Each of the states has a certain number of local government councils constitutionally provided. The Grundnorm makes it compulsory for the local government councils to be democratically governed. State Governments are empowered to ensure, there is a law in existence, to regulate the administrative and financial structure of the local government councils. The executive and legislature at the state level, have unfortunately devised a mode of circumventing the constitutional provisions which guaranteed democratically elected local government councils. It is the objective of this conceptual paper, to analyse the constitutional powers of the state governments to control the local government councils. The paper argues that the Code of Conduct Tribunal, being a quasi-adjudicatory body, has the power to sanction public officers who abuse their powers. Invoking the Tribunal's jurisdiction by subjecting public officers to trial for the abuse will play a vital role in deterring the State Governors and Members of the State House of Assembly from the infraction of the constitutional provisions. This role will go a long way in safeguarding democratically elected local government councils as constitutionally guaranteed in Nigeria.

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1. Introduction

Nigeria as a country adopts Federal System of administration with three levels of government. One of the tiers of the government is the democratically elected Local Government Councils. The function of the local government unit is to administer a cluster of people who shares a common interest. In administering the local governments, section 7 of the Constitution empowers the State Government to make sure relevant apparatus are on the ground. Unfortunately, the State Governors and the State House of Assembly members habitually refuse to conduct elections. Even where there were elected officials, there is a phenomenon of tenure truncation. The financial allocation of the local government remits to them through the State Government is being used by the State Governments. Many authors propose a constitutional amendment as a solution to the problems. The proposition is yet to see the light of the day. The failure of the suggestion may be due to the requirement of consent of the States House to have the Constitution amended. In this paper, the solution suggested, is to explore the constitutional mechanism for sanctioning Public Officers who abuses power. The paper focuses on the legal framework that establishes the local government councils in Nigeria. Some of the problems, the local council faces will also be examined. The paper attempts to suggest the mechanism that can be used to checkmate the precarious issues.

2. Problem Statement

The State Governors and State House of Assembly members have supervisory power over local governments. There are cases of abuse of power in controlling the local governments by the State Government's officials. Misuse of the constitutional responsibility by the two arms of the government is that they habitually refuse to allow local government election to hold. The failure to conduct the election gives the State Chief Executives and the Legislators the opportunity to appoint Caretaker Committee to govern the Councils. It is common, where an election is held for the State Government to dissolve the elected Local Government Councils. The dissolution usually is executed before the end of the Local Government Councils' tenure provided by the law. Another constitutional infraction being perpetuated by the State Government is the absolute control of the local governments' funds through State and Local Government Joint Account.

3. Research Questions

1. How can democratically elected Local Government Councils be protected from abuse in Nigeria?

4. Purpose of the Study

This paper examines the Constitutional provisions that established Local Government Councils in Nigeria. In examining the provisions, the work will attempt to trace the historical purpose of creating the local government. It is also part of the objective of this paper to highlight the functions of the Local Government Councils. In this paper, the relationship between the State Government and the Local Government has been considered together with the problem that comes out of it. The paper mulls the idea of sanctioning State Government officials who flout the constitutional structure of the local councils.

5. Research Methods

In achieving the objective of this paper, a doctrinal method has been chosen in conducting the research work. The method adopted had been sufficiently utilized to accomplish the purpose of the paper. There are a lot of articles written on democratically elected Local Government Councils in Nigeria. In addition to the write-ups, there are judicial decisions which interpreted the provisions of the laws on the Local Government Councils. There are also provisions of the Constitution which enjoin Public Officers to protect laws duly passed. Breach of those laws attracts punishment. This paper uses the pure legal research method to examine and construed the relevant primary and secondary data. This paper analyses both the primary and secondary data to achieve its purpose.

6. Findings

The foundation of the local government system in Nigeria is traceable to the British colonial masters. From the British Government's strategy of administration, the local government style of governance had the advantage to administer the colonial territory indirectly. This is due to the fact that the structure of the governance is a look-alike of the Nigeria's traditional systems of government in operation then. Nigerians were not averse to the local government system owing to its similarity with the indigenous styles of the government. The colonial administration continued to use the local government system with a little democratic feature given to the citizens to elect their leaders. After independence and subsequent periods, the local government administration also continued to be acceptable to both the military and the civilian governments in Nigeria (Abdulhamid & Chima, 2015). It was at the time of Murtala/Obasanjo military regime in 1976; the local government system received positive development. The regime overhauled the local government system by recognizing the type of the administration as a third-tier of government (Akpan & Ekanem, 2013). This radical transformation led to the inclusion of the local government as a third level of government in both the 1979 and 1999 defunct and current constitutions respectively (Akpan & Ekanem, 2013).

In Nigeria before the enactment of the 1979 defunct constitution, there were no constitutionally recognized local government councils. Section 7 of the 1979 constitution empowered the state governments to set up the local government councils (Abdulhamid & Chima, 2015; Eze & Harrison, 2013). The affairs of the local government councils at that period were to be democratically conducted. It was the responsibility of the state government to clearly delineate the geographical area of each of the local government councils. In discharging the duty, the interest of the people and communities to constitute each of the local government councils had to be taken into consideration. The rationale for the stipulated condition of taking an interest of the people before establishing the local government council was to promote peaceful co-existence among members of the communities. Furthermore, administrative convenience was also another important factor to be reckoned with in the creation of the local government councils.

However, the 1999 Constitution (As Amended) has brought development to the local government councils. In the Constitution, there is a specific number of the local government councils provided for the federation. Section 3(6) of the Constitution provides the number as Seven Hundred and Sixty-Eight. However, there is also a list of the names of local government councils. Those names can be found in Part

of the First Schedule to the Constitution. It is the State House of Assembly that has the jurisdiction to make laws for the local government councils. The legislative powers cover the establishment, structure composition and functions of the councils. By section 8 of the constitution, the legislative powers are not absolute. State House of Assembly is not competent to create an additional local government council alone. For an additional council to be established, the National Assembly must be involved. In addition to that, a referendum must also be conducted. The purpose of the referendum is to secure the approval of the citizens yearning for the establishment of the new local government council.

The aim of the Nigeria's Constitution is apparent that political leaders of the local government councils must emerge through elections (Ojebode, Onyishi & Aremu, 2017). Based Section 7 of the 1999 Constitution, it is compulsory for the local council's governance to be based on democratic tenets. It is the duty of the State Governments to ensure necessary arrangements are firmly on the ground to achieve the constitutional aim (Koni, 2016; Babatope & Egunjobi, 2016).

The constitutional arrangement starts with an enabling law which provides the composition of the political leaders. It is the content of the law passed by the State House of Assembly and assented by the State Governor that establishes the offices to vie in the local government elections. The offices are categorized into two; Local Government Chairman (together with the Vice Chairman) and Councillors (Olaiya, 2016). In addition to the offices, the tenure and qualifications for the two positions are also clearly stated in the enabling law.

It is the responsibility of the State Independent Electoral Commission to organize the local government council's election. Paragraph 3 of Part II of Third Schedule to the Constitution listed the commission as a State Executive body. The body has Chairman and Members not less than five but not more than seven. The Governor of a State, by virtue of section 198 of the Constitution is empowered to appoint the Chairman and Members of the Commission. The appointment is subject to the legislative confirmation by the State House of Assembly. The duration of the appointment of the Chairman and the Members of the commission is for a period of five years.

However, the State Independent Electoral Commission is to conduct the local government councils' election in accordance with the local government establishment law. Another law to be used in the conduct of the local government councils' elections is the State Electoral Law. These laws are legislations made by the State House of Assembly and duly signed by the State Governor. The former law states the qualifications and tenure of the aspirants; while the latter prescribes the procedure for the elections. The two laws have constitutional backing of sections 4(7) and 5(2) of the Constitution. Apart from the two laws, the State Independent Electoral Commission has the power to issue guidelines for the smooth conduct of the councils' election. It is only persons who participated in the local government councils' election and emerged victorious that will be sworn in as the elected officials. After the swearing in of the political leaders, then it is legally permissible for them to take control of the councils' administration.

Local Government Council administration revolves around the functions constitutionally assigned to the third tier. Fourth Schedule to the Constitution has enumerated local government's responsibilities. Moreover, section 7 of the Constitution empowers the State House of Assembly to expand the functions of the local governments. The rationale for the discretionary powers of the Assembly is to take care of the

peculiar needs of the local populace (Olaiya, 2016). For ease of comprehension, the functions of the local government councils have been classified into two; the exclusive and concurrent functions (Isa, 2015). The exclusive functions are specially designed responsibilities for the councils to discharge. While the concurrent duties, are to be shared with other levels of government more particularly the State Governments. The obligatory functions centre on planning and revenue generation. Provisions of primary education, healthcare and agricultural services fall within the concurrent functions. An Intervention of the state government in the joint responsibility areas is to ensure sufficiency of the social amenities. This will tremendously complement the local government council's effort in discharging their duties (Isa, 2015).

The elected local government officials are to meet up the demands of the community by executing meaningful projects. The works to be executed ought to be in line with the statutory functions of the local government councils through utilization of the public of funds. Statutory allocation of the local government fund comes from the Federation Account. Such sum of money is constitutionally been allocated to the State Governments. By virtue of section 162(5) and (6) of the Constitution, State Governments must maintain a special account for the funds. State Joint Local Government Account is the special account designated for safe keeping of the local government funds from the Federation Account. Thereafter, each of the local government councils in a state should be credited with its entitled funds in accordance with the terms prescribed by the State House of Assembly. There are other sources of income for the local government councils which include the revenue generated internally and a loan secured from financial institutions (Eze & Harrison, 2013). The financial income serves as additional resources to be spent by the local government councils in running their affairs.

There is a huge literature on the arbitrary control of the local government councils in Nigeria. State Governments have been firmly controlling the political and financial structure of the councils (Eze & Harrison, 2013; Abdulhamid & Chima, 2015; Tenioa, 2016; Ahmed, 2013; Koni, 2016; Okafor & Orjinta, 2013). Ambiguities in the constitution, particularly in sections 7 and 162 makes the State Governors and the State House of Houses of Assembly exploit the loopholes to run the affairs of the local government councils arbitrarily.

The Political composition of the local government councils through elected officials is a vital step towards achieving democracy. This is one of the tenets of the democracy constitutionally guaranteed. But in many states, elections into the councils have been deliberately suspended by the State Governments. As of 2013, out of 768 local government councils, there were no elections in 617 of them (Okafor & Orjinta, 2013). The strategy uses by the State Governments to circumvent the law is to appoint politicians or Civil Servants to run the affairs of the councils. In other words, Caretaker Committees of appointed officials with different nomenclature administers the local government councils (Abdulhamid & Chima, 2015; Ahmed, 2013; Koni, 2016; Okafor & Orjinta, 2013; Wilson, 2013). Even in the states where elections had been conducted, the State Governments arbitrarily truncates the tenure of the elected officials by dissolving the councils before the end of their statutory periods (Eze & Harrison, 2013; Akpan & Ekanem, 2013; Babatope, 2016; Ikechukwu, 2014; Wilson, 2014). The effect of the dissolution, notwithstanding the stipulated tenure by a state law, the officials must vacate their revered seats.

However, Courts in Nigeria, time without number had declared the truncation of tenure of the elected local government officials as illegal. It is also unconstitutional to replace the removed local

government officials with Caretaker (Obidinma & Obidinma, 2016) (Attorney General of Plateau State v. Goyol & Ors (2007) 12 NWLR Pt. 1059; Attorney General of Benue State v. Umar and Ors (2008) NWLR Pt. 1068 and Etim Akpan & Ors v. Hon. Peter Umah & Ors (2002) WRN). Despite those decisions and host of others, the State Governments have refused to refrain from the illegalities.

Moreover, apart from the political interference, the State Governments deliberately deprives fund to the local governments. Without financial strength, no project can be executed by the elected officials of the councils where they exist. It is the State Governments that directly discharges the exclusive functions of the local government councils by using their funds (Teniola, 2016; Wilson, 2013 & Isa, 2015). It is on record, in 2010, 31 out of the 36 States in Nigeria had tempered with the local governments' fund kept in the State and Local Governments Joint Account (Ikechukwu, 2014).

Most of the literature consulted in this paper made a point that constitutional amendment is the only measure that can protect democracy at the local government councils. Sections 7 and 162 of the Constitution need to be altered to give the councils political and financial independence (Abdulhamid & Chima, 2015; Teniola, 2016). The scholars viewed exhaustive provisions on the tenure and control of fund by the local government councils as effective measures to bring an end to the arbitrariness. But one fact which the authors failed to advert their mind was that constitutional amendment is cumbersome. In fact, it requires an approval of the members of the two-thirds majority of the 36 State Houses of Assembly by virtue of section 9(2) of the Constitution. None of the writers attempt to show how the process of altering sections 7 and 162 could be achieved. It is practically impossible for the process to succeed. The reason for this assertion is that members of the State Houses of Assembly are part of the problem.

However, there was no attempt in the previous research works to explore Code of Conduct Tribunal as an institution with powers to checkmate the abuse by the State Governments. Truncation of democracy at the local government level is an abuse of power. It is also a gross misconduct for the State Governors and Members of the State House of Assembly to prevent local government elections to be conducted (Orjinta & Okafor, 2013). It is an infraction of law for Governors and Members of State House of Assembly to unjustifiably deal with the funds allocated to the local governments.

Infringement of the constitutional provisions which strengthens democracy at the local government councils by the Public Officers is a breach of the oath of office. In the Seventh Schedule to the 1999 Constitution (As Amended), every Public Officer had solemnly affirmed to protect and abide by the laws in Nigeria. The subscription to the oath of office gives legitimacy to the State Governors and the Members of the State Houses of Assembly to rule. Failure to abide by the oath is unlawful which may warrant Code of Conduct Tribunal to intervene by sanctioning any erring Public Officer.

The State Governors and Members of State House of Assembly being Public Officers are duty bound to comply with Code of Conduct for Public Officers (Ahmed v. Ahmed (2013) LPELR – 21143). The Codes are moral and ethical rules constitutionally provided to be observed. The stipulated command is in Paragraphs 3 and 4, Part II of Fifth Schedule to the Constitution. In discharging public functions, it is unlawful for the State Governors and Members of State House of Assembly to abuse their powers. Deliberate act prejudicial to the right of persons falls within the meaning of abuse of power. Once such immoral and illegal conduct of abuse of power happens, it is the jurisdiction of the Code of Conduct

Tribunal to intervene. The intervention comes up where the breach is legally brought before the Tribunal for trial.

Section 7 of the Constitution directs the State Government to ensure eligible persons interested to contest for the local government council's election are allowed to exercise their right. It is also a duty on the State Government to guarantee the right of voters to the political franchise. An appointment of a Caretaker Committee by the State Government to pilot the affairs of the local government councils is an abuse of power. It is a glaring act prejudicial to the right of eligible persons to vote and be voted. The contravention may attract invocation of the jurisdiction of the Code of Conduct Tribunal. The same rule applies to the State Government dealing with local government councils fund kept in the State and Local Government Joint Account. The Governors and Members of State House of Assembly are the officials of the State Government charges with the responsibility of ensuring democratically elected local government councils. Failure on the part of the officials to discharge the functions may lead to them to be sanctioned by the Code of Conduct Tribunal.

Although serving State Governors have constitutional immunity from arraignment as provided in section 308 of the constitution; Members of the House of Assembly do not enjoy such protection. So to prevent a breach of the responsibility, any State House of Assembly member who supports the breach of section 7 and 162 of the Constitution should be taken to the Code of Conduct Tribunal. An indictment by the Tribunal has far-reaching consequence. Any Public Officer convicted and sentenced by the Tribunal may be directed to vacate his seat. In addition to that, the Tribunal has the power to bar him from holding public office for a period of ten years (*Saraki v. FRN* (2016) LPELR-40013). No member of the State House of Assembly will jeopardize his political career. Even if the State Governors want Caretaker to be appointed and the local government fund to be unlawfully tampered with, the legislature will not allow such acts. For a Governor to circumvent legislature in managing local government councils manned by Caretaker Committee, the wrath of impeachment beckons at him. The success of the impeachment pursuant to section 188 of the Constitution paves a way to the arraignment of the impeached Governor before the Tribunal.

7. Conclusion

In conclusion, the democratically elected Local Government Councils guaranteed by the Constitution is under siege. The problem of the local councils lies with the power of the State Government to supervise the councils. The supervisory role gives an opportunity to the State Governors and the Members of the State House of Assembly to expand their function to include the duties assigned to the Local Government Councils. For many years, the State Government refuses to conduct an election at the councils as and when due. The statutory financial allocation does not reach to the local government the way it should be. The suggestion for the constitutional amendment to tackle the problems as the only way; could not be achieved. This failure to amend the Constitution is due to the State House of Assembly's vital role in the process. The answer to the challenges bedevilling the Local Government Councils is to sanction the State Governors and the Legislators. The punishment of the officers is for them to be arraigned based on a complaint before the Code of Conduct Tribunal that will culminate to

punishing the State Government's officials. The sanctioning of the erring Public Officers for the abuse is capable of deterring the State Governors and State House of Assembly Members.

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