

ABERRATIONS OF CONSTITUTIONAL PROVISIONS TO GOOD GOVERNANCE AND SOCIO-ECONOMIC DEVELOPMENT IN LOCAL GOVERNMENT OF NIGERIA.

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Abstract

The study seek to examine the effects and aberrations of Constitutional provisions to the effectiveness of local government as the third tier of government and the operation of the doctrine of Separation of Powers in the local government administration. The study relied on primary and secondary sources of data which include Constitutions of the Federal Republic of Nigeria, textbooks, journals, newspaper and internet. The study revealed that the constitutional provisions relating to local government have wreck serious havoc to the effectiveness of local government as the tier of government in Nigeria. The study therefore recommended that the Constitution should grant the Local Government the rights to conduct their own affairs ranging from conducting elections into the local governments, disbursement of allocations and other funds accruable to them from the Federation Account. Henceforth, local governments should be receiving their revenue allocation directly from the federal account and that the Joint State Local Government Accounts should be abolished. Human rights issues should be integral to development and there is need to strengthen the existing human rights initiatives and institutions that will have direct bearing on local people. Also local government must equally be subjected to the standard code of good governance as contained in the New Partnership for Africa's Development/African Peer Review Mechanism declaration on democracy and good governance.

Keywords: *Local Government, Separation of Powers, Presidential System of Government, African Peer Review Mechanism, Social and Economic Development*

1. INTRODUCTION

The traditional system of local government is sometimes referred to as non-western pattern of local government. This pattern refers to the pre-literate types in many underdeveloped or developing countries of the World where local administrations such as the chiefs or traditional rulers, council of elders, the extended family system or the clan system. Here, the local traditional institutions formulate and implement policies for the traditional communities. The policies often

times, have been a reflection of the socio-political and cultural realities of their environment.¹

The post-colonial system of local government is often associated with the newly independent states of the World, faced with the need for economic growth and extension of new national power to the communities and the rapidly growing cities. The post-colonial system cut across all the systems in a modern day local government structure.²

A modern local government is a system of government where the state allows the establishment of local units of government with powers and authorities to make local decisions on matters that affect the local communities and mobilise local resources for implementation or execution of the decisions made.³ Local government throughout the universe, are considered as a strategic institution for the provision of basic socio-economic, environment and other services to the local dwellers. Their strategic vantage proximity to the grassroots makes them valuable and viable for providing effective and efficient services required by the community. They are instrument for good governance, sustainable growth and development in terms of socio-political structures. So accurate to say that local government, provides cultural, educational, management, research, commerce and political services.

More so, it provides employment opportunity, health facilities and boost the local economy and by extension, the national economy for the inhabitants of local communities.⁴

It is apposite to state here that running a local government by the people concerned or appointed to do so, is not a matter of convenient but must be running in accordance with the international code standard as contained in the NEPAD declaration on democracy and good governance and the provisions of laws, particularly, the Constitution.

However, the Constitution that gives legal backing to the creation of local government, makes provisions for the appointment and tenure of office of the chairman and councilors for the local government, gives it monetary statutory allocation from federal account, is at the

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¹ Henry, V. Okotie, Prof Kunle Ajayi, Prof A. R. Yusuf and Mrs Ifeyiwa, . Ogbonma-Nwaogu, 'Evolution of Nigerian Local Government,' School of Arts and Social Sciences, National Open University of Nigeria, Abuja, 2010, 20 <www.nou.edu.ng/uploads/NOUN-OCI/pdf/pdf/POI.216 accessed on 21 April 2016.

² Ibid, 20-21.

³ Ito D. and Eric, 'Local Government in Nigeria: Relevance and Effectiveness in Poverty Reduction and economic Development,' (Vol. 1, No.1, 2010, Journal of Economic and Sustainable development, 15.

⁴ Ibid.

same time provides aberration for the administration of the local government in such a way that local government loses its autonomy and remains an appendage or subordinate to state government. This assertion will be clear as the tune of this paper progresses. This paper therefore examined the role of local governments as contained in the Constitution of Nigeria, the concepts of Presidential system of government and Separation of Powers and their operation at local government. The paper further examined social and economic development in local government and some constitutional and administrative aberrations to effectiveness of local government as a third tier of government in Nigeria.

2. CONCEPTUALISATION OF TERMS

In legal content, the issue of definition of concepts has not been resolved with tune of finality. This is largely due to diverse nature and definitive dispositions of perspective disciplines within a given field. Therefore, a writer must be very careful while giving precise meaning to concepts in law, particularly when such meanings could have been unconnected with the perspective, ideological persuasion or the specialisation of the writer. Therefore, some concepts relevant in this paper are hereby examined.

2.1. Local Government

Many writers and researchers have spent a lot of times in fine-tuning the meaning of local government. In the process, they have highlighted the need for the infinite existence of this tier of government within the anatomy of all political systems in the world. In this regard, local government has been described as a process being managed by the people within a locality of their own affairs. The emphasis here is management, seen as a process or human activities, which involved the combination of human efforts with materials, money, etc, for the purpose of accomplishing a goal or number of goals. This process of management is located in a particular society. The people resident in a given society come together and organise themselves to harness their resources with a view to enhancing the welfare of the people of that society.⁵

Local government refers to a political sub-division, which are created within a state for the exercise of duties and responsibilities granted by the constitutional provisions or legislative enactments. It is an intra-sovereign geographical units found within sovereign nation or quasi-sovereign state. Like other units of government, local government possesses defined areas, a population, an organisation and

⁵ Orluwene, O. B., 'Constitutional Provisions and Challenges of Local Government Administration in Nigeria,' (Vol.14, No.3, June, 2008, The African Academic Forum, 64. http://works.bepress.com/ozyb_orluwene/6., accessed on 07 May, 2016.

authority to undertake and power to perform public activities.⁶ It has equally been defined as government by the popularly elected bodies with administrative and executive duties in matters concerning the inhabitants of a particular district or place.⁷

In Blair's opinion, local government is an organisation with resident population occupying a defined area that has a usually authorised organisation and government body; a separate legal entity, the power to provide certain public or governmental services and substantial degree of autonomy including legal or actual power to raise part of its own revenue.⁸ However, local government is a political institution which aims at not only to train its members for citizenship but also to get various services for the benefits of the community.⁹ Within its territory, a local government unit seeks to give opportunities to the people for the expression of their opinion concerning local affairs. It enables them to choose their representatives to take care of their local affairs on their behalf.

In an attempt to characterise local government and distinguish it from other fields of public administration at the grassroots level, Orewa detailed its features, forms and status within the political and administrative framework of a country as follows:

A local government is the level of government below the central government in the case of unitary state, or below the regional, provincial or state government in the case of federation, which is obliged to provide range of services set out by law, to its communities and has legal authority to do this. It also has legal power to enforce its executive and regulatory decisions on its citizens without resorting to social pressures to achieve this. Its area of authority and the basis for representation on its political leadership platform are defined by its instrument. It has its own staff and revenue.¹⁰

It should be stated here that local government is concerned with the localities and not with the country as a whole, it must for this reason be subordinate to the national government.¹¹

2.2. The Doctrine of Separation of Powers

The origin of this doctrine started from the British philosopher, John Locke (1632-1704) who observed the conditions of 17th century England. He thought that it was convenient to separate the legislative

⁶ Local Government in Nigeria: Everything You Need to Know (24 November, 2015), newsbeat/portl.com/local/government_in_nigeria_everything_you_need_to_know, accessed on 21 April, 2016.

⁷ Appadorai, A., *The Substance of Politics*, (New Delhi, Oxford university, 1975), 287.

⁸ Blair, G. S., 'Government at grassroots,' (L. A. Canifonia, Palisade Publishers, (1997).

⁹ Akpan, N. U., 'Epitaph to Indirect Rule,' in Oyediran, O., *Essay on Local Government and Administration in Nigeria*, (Lagos, Project publication Ltd, 1988).

¹⁰ Orewa, G. O. 'Principles of Local Government,' (Lagos, ASCON, 1991), 24.

¹¹ Jackson, W. E., 'The Structure of Local Government in England and Wales,' in Vishnoo Bhagwan and Vidya Bhushan, *Public Administration* (17th ed) (New Delhi India, S. Chad and Company Ltd, 2003).

and executive powers of government so that legislature can act quickly and at intervals and the executive can constantly be at work so that lawmakers will not exempt themselves from obedience and make law to suit their individual interests.¹²

Montesquieu, while describing the concept of separation of powers says:

Political liberty is to be found only when there is no abuse of power. Experience shows that every man invested with power will abuse it by carrying as far as it will go... To prevent this abuse, it is necessary from the nature of things that one power should be a check on another... when the Legislature, Executive and Judicial powers are united in the same person or body... there can be no liberty.... Again, there is no liberty if the judicial power is not separated from the legislative and executive... there would be an end of everything if the same person or body, whether of nobles or of the people, were to exercise all three powers.¹³

Separation of powers can therefore be defined as classification of government powers or division of government powers into three branches of legislature, executive and judicial powers, each to be exercised by a separate and independent arm of government as a preventive measure against abuse of powers which will occur if the three powers are exercised by the same person or group of people. It is the division of powers among the three independent and separate arms of government that is legislature, executive and judiciary to act as checks and balances on one another to prevent the excesses and abuse of powers.

In another words, it is the constitutional doctrine of division of the powers of government into the three branches of legislature,¹⁴ executive¹⁵ and judicial¹⁶ powers, each to be exercised by a different

¹² Malemi, E., *Administrative Law*, (3rd ed) (Lagos, Princeton Publishing Co., 2008), 53.

¹³ Baron De Montesquieu, *Espirit Des Lois* (Spirit of the Laws Anor v. A.G Western State (1971) IU. I. R. 201.

¹⁴ Section 4 (1) Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides that the legislative powers of the Federal Republic of Nigeria, shall be vested in a National Assembly for the Federation which shall consist of a senate and a House of representatives.

¹⁵ Section 5 (1) (a), and (b), *ibid*, provides that subject to the provision of this Constitution, the executive powers of the Federation shall be vested in the President and may, subject as aforesaid and to the provision of any law made by the National Assembly, be exercised by him either directly or through the Vice President and Ministers of the Government of the Federation or Officers in the public service of the federation and shall extend to the execution and maintenance of this Constitution, all laws made by the National Assembly and to all matters, with respect to which the National Assembly has, for the time being, power to make laws.

¹⁶ Section 6 (1) and (2), *ibid*, provides that the judicial powers of the federation shall be vested in the courts to which this section relates, being courts established for the federation. The Judicial powers of a State shall be vested in the courts to which this section relates, being courts established subject as provided by this constitution for a State.

group of persons as a means of check and balances in the government structure itself to protect the people against tyranny.¹⁷

2.3. Presidential System of Government

Nigerian Constitutions since 1979 have provided for an executive presidential system of government. The president nominates or chooses his ministers whose names are sent to the Senate for approval for appointment. Once the Senate confirms, the president then formally appointed them as ministers to head various ministries. The ministers exercise delegated powers which emanate from the President who is the head of the executive arm of government. In the real sense as provided in the Constitution which vests executive powers at the federal level in the President, the ministers are actually appointed to assist the president to exercise the executive functions conferred on him, through the means of the various ministries, departments and other public agencies of government.¹⁸ They owe their individual ministerial responsibility for the proper performance of their functions in the various ministries primarily responsible to the President. The President and the entire cabinet are responsible and accountable to the people of Nigeria who are the sovereign.¹⁹

In an executive Presidential system of government like Nigeria, the President is both the constitutional and executive Head of state. The President shall be the Head of state, the Chief Executive of the Federation and Commander-in-Chief of the Armed forces of the Federation. In his Constitutional position, he is similar to a constitutional monarch under the parliamentary system of government.²⁰ The ministers are not members of parliament and they do not responsible to the National Assembly, however, ministers or commissioners as the case may be, may be invited by the relevant legislature to explain a conduct or matters emanated from the running of their ministries.

There is collective ministerial responsibility under Presidential system of government however, not in terms of parliamentary system. Therefore, any minister or member of the executive who did not resign his post is deemed to be collectively responsible for the actions of the government taken by the executive at the time when he was in office as a minister. He is expected to defend the policies and actions taken by the executive, during his tenure of office as minister or commissioner and to receive the praise and blame for them.²¹ Where he does not support the policies of the government or if as a matter of principle, he

¹⁷ Malemi, E., (note 15), 52.

¹⁸ Ibid, 71.

¹⁹ See Sections 14 (a) and 22 of the Constitution of the federal Republic of Nigeria, 1999 (as amended)

²⁰ Oluyede, P.A.O., *Constitutional Law in Nigeria*, (1st ed), (Ibadan, Evan Brothers Nigeria Publishers Ltd, 2001), 224.

²¹ Malemi, E. (note 15), 72.

does not feel able to defend government policies, he is expected to resign from the government. Where he fails to resign, the president is free to relieve him of his post for failure to loyally support government policies. In the same vein the administration of local government in Nigeria follows the same style whereby the supervisory councilors, the secretary to the local government and heads of various departments are collectively responsible for any actions taken by the council. If any member of the local government could not support or defend the actions of the council as a matter of principle, he could resign his appointment and in the alternative, the Chairman of the local government may relieve him of his post.

3. SEPARATION OF POWERS AT LOCAL GOVERNMENT COUNCIL

The adoption of the New Partnership for Africa's Development and African Peer Review Mechanism instruments, Numerous African Union Resolutions and declarations and the provisions contained in several constitutions sent a strong message that African leaders were committed to democracy, including the theory of Separation of powers and good governance at any time since independence. They agreed to promote and respect human rights as entrenched in their national constitutions as well as in regional and international human rights instruments that they have ratified.²² In the past, local government was not recognised as a unit of government because, there was no constitutional backing. It was perceived as administrative convenience which serves the purpose of an outlet for federal and state governments. It is the consistent development and evolution of local government, coupled with the increasing functions performed by local government to the people at the grassroots that has transformed the local government as a viable unit of government.²³ It was expressed in United States Bureau of the Consensus that a unit of local government must exhibit three qualifications, that is, it must exist as an organised entity possessing organisation and some minimum power; it must have governmental character as an agency of the public to whom it must be accountable; and it must possess substantial autonomy.²⁴ Therefore, local government as the third tier of government was placed in a position of nearest to the people at the grassroots or local communities. Its closeness to the local populace enables it to perform special functions and services which bother on the interests and aspirations of the local communities.²⁵

²² DDPECG, para 14.

²³ Henry, V. Okotie, et al, (note 1), 2.

²⁴ Akpan, N.U, (note 9).

²⁵ Ibid.

As far as promotion of good governance is concerned, African leaders of AU members states participating in NEPAD agreed to adopt clear codes standards and indicators of good governance of the national, sub-regional and continental levels. They also agreed to fight corruption through parliamentary committees, anti-corruption bodies, including independent of judiciary that would help to prevent abused of powers.²⁶

In furtherance of its objective of enhancing local autonomy with local responsibility, the federal Government of Nigeria, through Decree No. 23, introduced the Presidential system of government at the local government level in 1999. The major thrust of the system is the incorporation of the principle of Separation of powers at the local government level. The essential features of this principle are:

The executive arm of local government shall consist of the Chairman, vice-Chairman and supervisors, who, together, shall be separate entity, distinct from the local government council. The meetings of the executive arm of local government shall be serviced by the secretary to the local government in accordance with the letters and spirit of the Civil Service Reform as applied to local government. The secretary to local government shall hence forth, be appointed by the Local Government Chairman. The appointment is political and the secretary shall hold his appointment at the pleasure of the chairman who appointed him or her. Accordingly, the secretary shall be deemed to have left office at the expiration of the tenure of office of the Chairman who appointed him. He shall serve as the chief administrative adviser to the Executive Arm of the Local Government; coordinate all the activities of the local government; and keep proper records of the local government.²⁷

The Chairman of the local government exercised the following major functions and responsibilities:

- a. Serves as chief executive and accounting officer of his local government;
- b. Directs the affairs of the local government and allocates responsibilities to the vice-Chairman, supervisors and the secretary;
- c. Observes and complies fully with the existing guidelines, financial regulations and other laws operating in the local government system which governed receipts and disbursement of public funds and other assets of the local government entrusted in his care;

²⁶ Andre Mbata B. Mangu, 'Separation of Powers, Independence of Judiciary and Good Governance in African Union Member States,' 14 <[www.cphq.org/cpahq/cpadoc/Good Governance in African Union Member States.pdf](http://www.cphq.org/cpahq/cpadoc/Good%20Governance%20in%20African%20Union%20Member%20States.pdf)>, accessed on 13 June, 2016.

²⁷ See Ozy, B. O., 'The Third Tier of Government in Nigeria: A Historical Overview,' (2006), 22. <https://works.bepress.com/ozyb-orluwere/22>, accessed on 25 April 2016.

- d. Holds meetings with members of the Executive Arm, at least, once every week;
- e. Renders monthly statements of revenue and expenditure to the legislature;
- f. Liaises with the legislature and the leader of the legislature in the interest of the local government;
- g. Ensures the observance of spending limit of all members of the Executive Arm and heads of department;
- h. Addresses at least, once a year, the local government council and presents an account of his stewardship; and
- i. Ensures that the local government council was provided with all the necessary materials and funds to enable the council to operate effectively.²⁸

Furthermore, the Chairman appoints supervisors in consultation with the legislative arm of local government council. Such supervisors could come from within and outside the council and were assigned specific portfolios or responsibilities.

On the other hand, the local government council was also properly constituted as legislative arm of government and shall be charged with the following responsibilities:

- i. Law-making, debating and passing local government legislations;
- ii. Debating, approving and possibly amending local government annual budget, subject to the Chairman's veto which could be overridden by a two-thirds majority of the council;
- iii. Vetting and monitoring, the implementation of projects and programmes in the local government annual budget;
- iv. Examining and debating monthly statements of income and expenditure rendered to it by the Executive Arm of the local government;
- v. Impeaching the local government Chairman who has committed impeachable offence in accordance with the Constitution of the Federal Republic of Nigeria;
- vi. Advising, consulting and liaising with the local government chairman;
- vii. Performing such other functions as may be assigned to it from time to time, by the House of Assembly of the state in which it is situated.²⁹

The Decree also provided for the election of a leader of a council whose role was synonymous with that of speaker of the House of Assembly. The councilors were part-time legislators and meet, at least once in a month.

²⁸ Ibid, 23.

²⁹ Ibid, 24.

In addition, the decree made provision for the office of the Council Clerk. The Head of Personnel Management was designated as Council Clerk in addition to his other normal duties.³⁰

The above provisions have become fully operational in all the local government councils in Nigeria. It is momentous to however note that the principle of Separation of Powers is yet to be extended to the Judicial Arm of Government at the Local Government level. The gains which should have been accrued to local government councils following the abolition of Ministries of Local Government in 1991 and increase in the revenue accruable to local government councils could not be materialised because of the creation of the Inspectorate Departments which took over the functions of the Ministries of Local government and handing over of primary school system to the local government which depleted their resources.³¹ It is equally gratify to further state that, the old style has been reverted where the Local Government Councils are being controlled by the Ministries of Local Government and Chieftaincy Affairs.

4. SOCIAL AND ECONOMIC DEVELOPMENT IN LOCAL GOVERNMENT

Nigeria is operating presidential system of government and federalism. Therefore, the federal government is not in the best position to respond to all needs or every issues affecting local communities. In the light of this, local government areas in Nigeria need greater freedom and capacity to tackle local issues locally, working independently and in partnership with other local and state agencies.³²

Local government areas have fundamental role to play in the political and economic development of any nation. They have been empowered constitutionally to provide for democratic representation of local communities. This role is an encompassing one ranging from responsibilities and services which impact heavily on the lives of local dwellers.³³ They are responsible for public administration, health services, education and social services, economic development, improving the welfare of the population, providing them with social security and preserving the environment.³⁴

The place of the third-tier government, that is local government administration in Nigeria, has remained the thorniest and contentious issue in Nigerian federalism. It has to be, principally because it actually has led to general distortions in public service delivery at the

³⁰ Ibid.

³¹ Obasi, L. N., 'Beyond the Payment of Teachers' Salaries,' (National Concord, February, 1992).

³² Ito D. and Eric E., ' (note 3), 17.

³³ Ibid.

³⁴ Suttmuller, P. M. and Setiono, I., 'Diagnostic on Evidence-Based Public Policy Formulation under Decentralisation,' (Australian Aids Tertiary Education and Knowledge Unit, 2011), 1.

most crucial levels of government. The local or municipal government is the most important tier of government principally because it is the so-called basis for grassroots governance and by statutory fact provides the most domestic of the homeland services in a nation. It generally ought to be the basis for city or county or municipal administration, who collects your tax; who provides and regulates electricity service and energy use; who cleans up the street after a storm or after its daily use; who builds and maintains county and municipal roads – those service arteries into the heart of the land and by which we traverse our cities and hinterlands on our daily chores; who runs the local police and emergency services; the parks; the City hospitals and town schools; and so on so forth. The local government is by its very nature that vital arm of public governance, and the true measure of our autonomy from an overwhelming behemoth state. Distortions in Nigeria's local government administration and in the acts establishing them under the Federal constitution are the result of the long years of military rule.³⁵

For the purpose of ensuring social and economic development in Nigeria, local government discharges the following duties in Nigeria.

Provision of Healthcare Facilities

Primary Health care has its roots at the local government level and forms an integral part of the Nigerian social and economic development. It is the first level contact of the individual and community in the national health system, thus bringing health care as close as possible to where people live and work and contributes the first element of a continuing health care process.³⁶

Primary Health Care means essential health care based on practical, scientifically, sound and socially acceptable methods and technology, made universally accessible to individuals and families in the community through their full participation and at affordable cost to maintain at every stage of their development in the spirit of self-reliance and self determination. A health care system that is soundly rooted in a local government which is closer to the people is likely to be more effective because it can intervene in the community on different levels and in different ways. Ideally, entrusting Primary Health Care to local governments should have the effect of making healthcare services more effective and closer to the grassroots. It is worthwhile to note that the healthcare system in Nigeria is severely

³⁵ Obi N., 'The Third Tier Question' www.vanguardngr.com/2013/08/the-third-tier-question/, accessed on 24-04-16

³⁶ See Section 7 (1) (c), Fourth Schedule, Constitution of the Federal Republic of Nigeria, 1999 (as amended)

hampered by a shortage of well-trained medical personnel, particularly at rural areas.³⁷

Waste management and sanitation

Sanitation is the provision of facilities and services for the safe disposal of human urine and feces. Sanitation also refers to the maintenance of hygienic conditions, through services such as garbage collection and wastewater disposal. Inadequate sanitation is a major cause of disease world-wide and improving sanitation is known to have a significant beneficial impact on health, both in households and across communities.³⁸

The effects of the various programmes on local government will likely be indirect. However, to the extent that initiatives may affect areas under local government control – for example, projects to conserve wetlands or to combat invasive alien species – local governments may find themselves affected more concretely by these programmes. Accordingly, it would be advisable for local government associations to monitor developments in this area and, where necessary, to intervene in policy development. Improved health impacts directly on human capital and its productivity. Local governments have constitutional responsibilities here in both the provision of infrastructure and services. It is generally empowered to make provision and maintenance of public conveniences, sewage and refuse disposal.³⁹

In general terms and with regards to infrastructural development at the local government level, a measure that can and needs to be adopted by innovative local governments is to encourage private sector participation through methods such as build, operate and transfer (BOT), build, own, operate and transfer (BOOT), rehabilitate, own and transfer (ROT) and concession as well as provide counterpart funding for major infrastructure projects for which either the resource requirements are too high or the incentive too low for private sector participation.⁴⁰

Business Environment

The local government in Nigeria is constitutionally responsible for the construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such other public facilities as may be prescribed from time to time by the House of Assembly.⁴¹ Doing this will invariably provides enabling environment for investments at local communities. Therefore, business

³⁷ Ito D. and Eric E., (note 3), 18.

³⁸ See World Health Organisation

³⁹ Section 7 (1) (h) of 4th Schedule of Constitution of the Federal Republic of Nigeria, 2011 (as amended)

⁴⁰ Ito D. and Eric h., (note 3), 18.

⁴¹ Section 7 (1) (f) (note 49).

environment refers to the enabling conditions for private enterprise and business competitiveness in an economy. It covers a range of policy, regulatory, legal and institutional factors that determine the incentives for private sector investment. In Nigeria and in every other federation, business environment is the shared responsibility of the federal, state and local governments. Hence, the overall business environment will depend upon complementation and synergy between these levels of government. Provision of good infrastructure and a higher quality of human capital can give local communities a competitive edge in the area of attracting investment and the resulting employment and income from taxes, to their areas.

Infrastructure for Social and Economic Development

Human Resource Development Infrastructure is basic facilities, amenities and installations which strengthen the operations of firms and households depend. An adequate and efficient infrastructure is a freebie for a sustainable and rapid social, economic and development growth and serves as fundamental source of external economies.⁴² Common examples include transportation, water, electricity, communication, health and education facilities and systems. Infrastructure, whether social or economic, plays a significant role in the economy. It eases productive activities by alleviating costs and hence, makes firms more competitive. No economy can grow and develop without robust and efficient infrastructure. It is momentous to state here that local government in Nigeria receives the least allocation from the federation account and this has not given them the needed resources to erect structures that could stand the test of time.

NEPAD also includes Human Resource Development Initiative which includes reversing the Brain Drain. The first of these initiatives focuses on poverty reduction. Among the stated actions are the establishment of a gender task team to ensure that women's issues are addressed; and establishment of a task team to accelerate the adoption of participatory and decentralized processes for the provision of infrastructural and social services.⁴³ Here, perhaps more than any other single area, there is a clear nexus between the interests of local government and the objectives of NEPAD. As such, participation in the elaboration of these initiatives would be an important area for local government involvement.⁴⁴

⁴² Udunze U. M., 'Local Government as an Agent of transformation in Nation Building,' (Department of Public Administration, Nnamdi Azikwe University, Awka), 270-280, 275. <<http://www.omicsonline.com/open-access/local-government-as-an-agent-of-transformation-in-nation-building-2315-7844-1-139.pdf?aid=16297>>, accessed on 26 March, 2016.

⁴³ Ibid, para. 119.

⁴⁴ Elizabeth Darent, The Implications of NEPAD for Local Government in South Africa, Local Government Working Paper Series, No. 1, 2004, 8.

<<http://www.communitylawcentre.org.za/project/Local-Government>>, accessed on 09 June, 2016

Further elements of the human resources initiative are bridging the education gap and reversing the brain drain, agriculture, and science and technology.⁴⁵ As these programmes are largely geared at projects to be undertaken at the regional level, the proposals contained within are likely, at best, to have a peripheral impact on local government.

Provision of Effective Transportation Services

Agriculture was the major sustainer of Nigerian economy before the discovery of oil in Nigeria in commercial quantity. With agricultural advancement, a nation launches itself into one of the leading economies in the world. Therefore, any country that could not feed its citizens cannot be termed as a developed nation.⁴⁶ Many roads in rural areas come under the authority of local governments.⁴⁷ When one considers that agriculture production in Nigeria is a largely rural affair, the condition of rural roads takes on added significance. A basic problem for local agricultural producers is the high cost of transportation of these goods. A considerable part of these costs are attributable to these bad roads. If local governments were able to come up with innovative ways to fund and effectively implement the improvement of these roads, the ability of rural farmers to compete in a larger market would grow in due measure.

Obviously, importation of the stable food for the citizens should be regarded as a national disgrace. Agriculture is an end to end profit making ventures which engineers rapid social and economic development from the grassroots. Distribution of farm implement such as fertilizer, insecticide, etc through local government, encourages farmers and makes it accessible by them. A lot of researches have revealed that over 70% of Nigerian labour force is employed in agriculture and they reside in the local communities. In fact, local government is a sound based through which food sufficiency could be attained with the aid of federal government and this would generate employment and curtail rural-urban migration which leads to prostitution, armed robbery, abduction and kidnapping and other vices. All these could not be seen manifested until there is efficient and effective road networking in the local government areas.⁴⁸

⁴⁵ Ibid, paras 120-125; 132-137 and 145-146.

⁴⁶ See Okeke, J Ka-Anayo, et al, 'Ideas in Development: A Multi-Disciplinary Overview,' (Creative Education Management Consultant, Oweri, 1995).

⁴⁷ Section 7 (1) (f) Fourth Schedule of the Constitution of the Federal Republic of Nigeria, 2011 (as amended)

⁴⁸ Udunze U. M. Local Government as an Agent of Transformation in Nation Building, Department of Public Administration, Nnamdi Azikwe University, Awka, 2007 270-280, 274.

Poverty Alleviation Programmes

The socio-Economic Development portion of the NEPAD declaration on democracy, political, economic and corporate governance states that poverty can only be effectively tackled through the promotion of democracy, good governance, peace and security.⁴⁹ The development of human and physical resources, gender equality, openness to international trade and investment, allocation of appropriate funds to the social sector; new partnership between government and private sectors and with civil society are also important. While acknowledging the central role economic growth can potentially play in human development, poverty reduction and the achievement of the Millennium Development Goals, it is becoming widely understood amongst the development community that special efforts must be made to ensure poorer sections of society are able to participate in economic growth. Consequently, poverty alleviation measures are of paramount importance.

Local governments, given their grassroots location, have a special capacity to impact on poverty in Nigeria. This is in line with the efficient services or efficiency theory of local government. The efficient services theorists believe that the local government occupies the best position for the efficient performances of certain functions. This is made possible because of the nearness of the council of the people, and the manageability of the population.

A key problem hampering the effectiveness of poverty alleviation measures to date in Nigeria has been identified as a lack of targeting mechanisms for the poor and the fact that most of the programmers do not focus directly on the poor.⁵⁰ Local governments are specially poised to reach the poor in a more direct way. It is highly advisable that each local government seek to develop tailor-made poverty alleviation programmers. They may be completely new concepts of programmers adapted from national initiatives to their own specific circumstances. Poverty alleviation measures taken at the federal level will be more effective and sustainable if complemented or reinforced by reforms at the state and local government levels.

⁴⁹ The codes identified are the following: the Code of Good Practices on Transparency in Monetary and Financial Policies; Code of Good Practices on Fiscal Transparency; Best Practices for Budget Transparency; Guidelines for Public Debt Management; Principles of Corporate Governance; International Accounting Standards; International Standards on Auditing, and the Core Principles for Effective Banking Supervision. Declaration, para., 20.

⁵⁰ Obadan, M.L. 'Poverty Reduction in Nigeria: The Way Forward,' (CBN Economic and Financial Review, 39 (4) (2002).

Education Services

One of the functions of local government is the provision and maintenance of primary, adult and vocational education In Nigeria.⁵¹ Education is administered by three branches of government: primary education is under the largely control of local governments. The issue of gaps in the institutional capacity to deliver primary education of a sound quality is crucial in the management of primary education in Nigeria. There is also the need for the creation of more social awareness on the recent UBE Bill to ensure compliance. The various local governments should also back this up with edicts and bylaws where necessary as well as formulate clear policies on enrolment of pupils, funding, provision of facilities and quality assurance.

Security of Life and Property

Local governments in Nigeria need to embrace community policing Community policing initiative. It entails community partnership in creating a safe and secure environment for local community Effective community policing has a positive impact on reducing neighborhood crimes, helping to reduce fear of crimes and enhancing the quality of life and property in the community. This is imperative because neither the police nor the criminal justice system can bear the responsibility of ensuring a safe and secure community alone, the public, with active coordination by local governments, has a very active role to play in ensuring public safety.⁵²

Regulatory services and administration of taxes, levies and fees

Regulatory functions encompass public administration services, laws and law enforcement, rules, codes and procedures by which government renders services to private enterprises. To perform well, businesses require well-functioning legal and enforcement systems and efficient and transparent public administration.

Procedures that are bureaucratic, time consuming, costly and non-transparent lead to arbitrariness and provide room for large-scale corruption. A key role that local governments have to play is related to the easy, transparent and efficient administration of taxes, levies and fees. Local governments in Nigeria have an unsavory reputation for intolerance towards and, in some cases, harassment of small and microenterprises. They need rather to provide them with services that facilitate their work

5. ABERRATIONS OF CONSTITUTIONAL PROVISIONS TO GOOD GOVERNANCE OF THIRD TIER OF GOVERNMENT IN NIGERIA

The third tier of government or local government administration as a concept has created excitement among academic and administrators. As a concept and as one of the vertical or institutional arms of the federal political structure, the local government administration has attracted the attention of many scholars within the academia. These scholars have in varying degrees of precision, analysed the meaning and traced the etymology of local government. They have, in the process, highlighted the need for the existence of this arm of government within the autonomous of all federal political systems to world over.⁵³

Local government in most African countries performed limited functions contrary to constitutional responsibilities imposed on them. Local governments are merely considered as administrative arm of other tiers of government that is Federal and State governments. The situations of local government administration under the 1999 Constitution of the Federal Republic of Nigeria is very confusing. Although, the Constitution guarantees the existence of a democratically elected local government system, however, like the 1979 Constitution, gives the states the responsibility to handle issues of organisation and structure. The aberration and complexities in the 1999 Constitution led to prolonged disagreement between the Federal Government and Lagos State Government over the creation of local governments. The federal government suspended and withheld for any long period whatsoever, the statutory allocation due and payable to the Lagos State Government pursuant to section 165 (2) of the Constitution Federal Republic of Nigeria 1999 (as amended).⁵⁴ The issues in contention are yet to be fully resolved and these have negative affecting good governance and development principle of local government administration.⁵⁵

It is conceded that there were certain inadequacies under the provisions of the 1979 Constitution which gave rise to some interpretational challenges before courts. A good example was that, the Constitution expressly named all the states of the federation⁵⁶ but merely included the list of the existing Local Government Areas in the second Column of Part 1 of the First Schedule to the Constitution. The mere reference to them as 'areas' in Section 3 (2) of the Constitution

⁵³ Ozy, B. Orluwere, (note 27), 22.

⁵⁴ *A.G Lagos State v. A. G. Federation* (2004) 18 NWLR (PT 904) 1.

⁵⁵ Akinyetun, T. S., 'Constitutional Provisions and Local Government Administration in Nigeria.' (2014). 5. http://www.academia.edu/7303315/CONSTITUTIONAL_PROVISIONS_AND_LOCAL_GOVERNMENT_IN_NIGERIA, accessed on 07 May, 2016.

⁵⁶ Section 1(1) Constitution of the federal Republic of Nigeria, 1979.

gave rise to the question whether the Constitution meant to recognise them as local government Areas or just geographical areas as merely descriptive of state boundaries.⁵⁷

State Joint Local Government Account: A critical challenge in the chronicles of the local government administration in Nigeria is the provision of section 162 (6) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides thus:

Each state shall maintain a special account to be called 'State Joint Local Government Account' into which shall be paid all allocations to the local government councils of the state from the Federation Account and from the Government of the state.

State Governments are expected to remit money into this account from revenue accruing to them based on terms and in such manners as may be prescribed by the National Assembly.⁵⁸

Section 7 (6) also provides as follows:

(a) The National Assembly shall make public revenue 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.

On the face of the constitutional provisions, one would have conceded that the Nigerian local government areas would be spoon fed with bounties of fund coming from constitutionally guaranteed sources from federal and states coffers.

It is chagrin and disheartened to observe that the local government councils have continued to experience scarcity of fund in spite of those expressed provisions in the Constitution. At first instance, such remissions are to be made through the Federal Government, an Act of National Assembly, which has utilised the good office to ensure that a paltry 15% or less are allocated to the 774 local government areas in the federation while granting itself a whopping 53% upward from the Federation Account. Secondly, most State Governments have neglected to accomplish their constitutional responsibilities to the local government areas in their jurisdictions, while at the same time, swindling the accruals in the joint accounts, under the pretence of ensuring accountability and probity and even developments in the state by Deeping their hands into the monies meant for local government councils.⁵⁹

Another abnormal provision in the constitution was its failure to provide expressly for 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 under the 1979 Constitution. The problem was whether the areas listed in Part II of the First Schedule of the Constitution fixed local government areas which could only be changed through Constitutional amendment. Luckily enough, the 1999 Constitution has remedied these deficiencies but not without containing other provisions that are equally susceptible as such potential of conflicts in the Federal arrangement.⁶⁰

There is prima-facie evidence that provisions of the 1999 Constitution quibble on and in fact alternate between autonomous local government and local administration. Regarding local government, the Constitution makes some provisions that impede effective administration and good governance at local government as the third tier of government.

The section of the Constitution that really conveys lack of vision and tact in constitutional drafting on local government in Nigeria is section 7 (1).⁶¹ The Constitution provides thus:

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.⁶²

The obvious aberration lies in the clause 'subject to section 8 of this Constitution'. By the former clause, a State is empowered to make law to regulate local government within the state in all corollaries because the subject area of establishment, structure, composition, finance and function covers all aspects of the existence and operations of local government. Such laws made by a state would no doubt be in conflict with provision already made by the Constitution for local governments in the said subject areas, particularly, sections 7 (1) first stanza; 7 (2) and (5); 57, 162 and 229. Whereas, the clause 'subject to the provision of this Constitution' would prevent such conflicts because it will automatically render the laws of state null and void on the premise of its inconsistency with the Constitutional provisions.

Also, the imposition of the uniform system of local government by the military government in 1976 local government reform and by extension, 1999 Constitution without regard to historical, culture, religious, ethnicity and peculiarities is an abuse on political, economy and cultural autonomy of the local government.

⁶⁰ Ibid. 6

The Constitution of the Federal Republic of Nigeria 1999 (as amended) also silence on the status of local government as to its legislative power. For instance, the administration and fiscal regulations of the governments at the grass roots are placed under the State Government while there is no separate legislative list maintained for local government under Part I of the Second Schedule to the 1999 Constitution. Also, section 318 of the Constitution specifically defined the 'Civil Service of the Federation and the 'Civil Service of a State' while such definition of 'Local Government Civil Service' was not provided. The same section 318 defined 'government' Local Government in nature construable of a separate entity outside the federal and state Governments. The provision appeared to have conferred on the local government, a status distinguishable from both state and federal governments.⁶³

Local government areas loss their legislative and fiscal competence to the federal and state governments because of the prominent roles played by the duo in the local government affairs. The abnormality is traced to the Provisions of the Constitution for the establishment of other regulatory bodies like Local Government Service Commission (LGSC), Auditor – General of Local Government (AGLG) and Ministries of Local Government and Chieftaincy affairs. The Constitution empowers the LGSC to employ, deploy, promote and discipline senior local government staff. This restrains the local government areas to have effective control over their staff. The Auditor-General of Local Government which was created to ensure effective post expenditure audit for local government account has the problem of weakness in terms of the number of qualified staff and resources of doing the job. The report of AGLG goes to the State House of Assembly and no provision is made for downward accountability. The local citizens have little or no access to the financial performance of their local governments.⁶⁴

The involvement of the Ministry of Local Government and Chieftaincy Affairs in the affairs of the local government areas in Nigeria is another barrier to effectiveness of local government as the third tier of government thereby violates the principle of autonomy as enshrined in the Constitution. The appointment, disposition, installation and discipline of traditional rulers in the various local government areas in Nigeria are done by the state government through the Ministry of Local Government and Chieftaincy Affairs.

Local government suffers setback, conceivably, for reasons of backwardness in governance generically associated with institutions in less developed countries, where there is lack of working institutions

⁶³ Taiwo A. Olaiya, 'Government and Constitutional Issues in the Nigerian Local Governments.' Vol. 9, No.1, 2016, *Journal of Politics and Law*, 14.

⁶⁴ Orluwene, O B. (note 5), 69.

across the various sectors that has led to failure of the system to deliver public good. It is disheartened that federal government has assumed a father –figure in the federation that made resource mobilisation a matter of serious concern in the state and the local governments. Ironically, notwithstanding the constitutional positioned of clauses guaranteeing a federal arrangement in which the thirty six states of the federation are accorded autonomous powers. This is not backed with necessary allowance for access to sources of fund for the discharge of the crucial statutory responsibilities precedent and antecedent to these provisions. It is such constitutional anomalies and landmines that have rendered local government administration in the country ineffective and thereby depriving people at the local communities the required political and economic advancement which come as a result of well balanced political structure predicated on constitutional democracy as practiced in other levels.⁶⁵

6. CONCLUDING REMARKS

Local government areas in Nigeria have become orphans by errors committed by the Constitutions of the Federal Republic of Nigeria and deliberate attitudes of the political office holders manipulating the Constitutional provisions in relation to local government to achieve self aids.

In most States, the Governors administering Local Governments indirectly by refusing to conduct elections into the local governments and instead, appointed their cronies as Transition Interim Committee Chairmen and Members or as Soles Administrators as the case may be. Where they managed to conduct elections through the instrumentality of the State Independent Electoral Commissions, members and supporters of their political parties are rigged into offices as either executive chairmen or councilors. This unwelcome development has weakened our democracy and polity since it does not produce viable oppositions.

Our democracy is matured enough and this study hereby call on the Federal Government and the National Assembly to amend the relevant sections of the Constitution to ensure that local government areas in Nigeria are made autonomous without further interference from the state governments. The local government system in itself is a complete one, with both executive and legislative arms. The legislative arm made up of councilors should be allowed by the Constitution to make laws for the local government as well as carry out the necessary oversight functions at that level.

The amendment should also scrap the State Independent Electoral Commissions and empower the Independent Electoral Commission (INEC) to also conduct elections into the local governments during the

general elections when elections into other first and second tiers of governments are held. The tenure of the local government administrations should be amended in the Constitution to a four year term as applicable at both Federal and State levels.

It is unfortunate that the Constitution granted the state governments the right to interfere in the affairs of the Local Government ranging from conducting elections into the local governments, disbursement of allocations and other funds accruable to them from the Federation Account and other so-called oversight functions of the State Houses of Assembly on the local governments. Henceforth, local governments should be receiving their revenue allocation directly from the federal account. Therefore, the Joint State Local Government Accounts should be abolished.

To ensure even development among the three tiers of government in Nigeria, the African Peer Review Mechanism process should include evaluation of the performance of local governments with respect to the standards of transparency, participation, application of the rule of law, and equality rights set out in the Declaration, as well as the standards of economic governance found in the various international codes of conduct adopted by the member states.