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## CONSTITUTIONALITY OF LOCAL COUNCIL DEVELOPMENT AREAS IN NIGERIA

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**ABSTRACT:** *This paper examines the legality of Local Council Development Areas and similar bodies created by State Governments in Nigeria. The paper considers if the creation of Local Council Development Areas is in compliance with the provisions of the Constitution of the Federal Republic of Nigeria. It shows that while some State Governments renamed newly created Local Government Areas as Local Council Development Areas, some created Local Council Development Areas from the onset in a bid to avoid full compliance with the procedure stipulated by the Constitution for creation of Local Government Areas. It argues that although the State Government has constitutional powers to create Local Government Areas, it does not have the power to create Local Council Development Areas. This is because Local Council Development Areas are not listed in the Constitution of Nigeria. It considers the factors facilitating the creation of Local Council Development Areas including the failure of the Federal Government of Nigeria to challenge the creation and operation of such bodies and the reluctance of the Supreme Court of Nigeria in making a pronouncement against such illegal acts, thereby nipping it in the bud. The paper concludes that until these factors are addressed and the Federal Government rises up to its duty to defend the Constitution by challenging the illegality in the court of law, State Governments will continue to create Local Council Development Areas in violation of the provisions of the Constitution of Nigeria.*

**KEYWORDS:** constitution, local government area, local council development areas, house of assembly, national assembly.

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## INTRODUCTION

Local Council Development Areas are administrative bodies created by the House of Assembly of a State but are not listed in the Constitution of the Federal Republic of Nigeria.<sup>1</sup> They are created under the law of a State in the same manner as Local Government Areas are created but unlike Local Government Areas that are listed in the Constitution,<sup>2</sup> Local Council Development Areas are not. Creation of Local Government Areas in Nigeria is governed by the provisions of the Constitution of Nigeria. It starts with the creation of new Local Government Areas by the House of Assembly of a State as required by section 8(3) of the Constitution and concludes with the submission of the names and headquarters of the newly created Local Government Areas to the

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<sup>1</sup> Constitution of the Federal Republic of Nigeria Cap. C23 Laws of the Federation of Nigeria 2004.

<sup>2</sup> All Local Governments Areas in Nigeria are listed in Part 1 of the First Schedule to the Constitution.

National Assembly for listing in the Constitution as required by sections 8(5) and (6) of the Constitution. It is only when all these are done that a Local Government Area is validly created. However, some State Governments in Nigeria have devised a means of boycotting the concluding phase of creation of Local Government Areas as stated in sections 8(5) and (6) of the Constitution. They only comply with section 8(3) by creating new Local Government Areas but do not submit the names and headquarters of these newly created Local Government Areas to the National Assembly of Nigeria so that they can be listed in the Constitution as required under sections 8(5) and (6) of the Constitution. They later change the names of these Local Government Areas to Local Council Development Areas or Development Areas. Some States even create Local Council Development Areas directly claiming section 8(3) of the Constitution as the enabling law. Thus, the whole process of creating new Local Government Areas starts and ends with the House of Assembly of the State without recourse to the National Assembly. Examples of States that have done this are - Ebonyi, Lagos, Nassarawa and Oyo States. The Houses of Assembly of Lagos and Oyo State created Local Council Development Areas while the Houses of Assembly of Ebonyi and Nassarawa States created Development Areas. These States' legislative Houses created Local Council Development Areas and Development Areas without any constitutional power to do so. Section 8(3) of the Constitution only gives a State House of Assembly the power to create Local Government Areas and not Local Council Development Areas or Development Areas.

Considering the above, this paper examines the requirements for creation of Local Government Areas under the Constitution of Nigeria. It examines the position of the Constitution on creation of Local Council Development Areas and Development Areas. It also examines their establishment and administration under State laws. It shows that these administrative bodies so created are defective and illegal, as a result of their name and non-inclusion in the Constitution. It identifies certain factors that facilitate their creation and concludes with recommendations on the legal measures necessary for stemming the unconstitutional trend of creation and administration of Local Council Development Areas and other similar bodies in Nigeria.

### **Creation of Local Government Areas under the Constitution of the Federal Republic of Nigeria**

Section 8(3) of the Constitution gives the House of Assembly of a State the power to create new Local Government Areas.<sup>3</sup> However, this is subject to sections 8(5) and (6) of the Constitution which provides that the names and headquarters of newly created Local Government Areas must be submitted to the National Assembly and listed in Part I of the First Schedule to the Constitution.<sup>4</sup> It is after this has been done that new Local Government Areas are legally created. Thus, creation of Local Government Area is in two phases. The first phase is the creation of the Local Government Areas by the House of Assembly of a State (section 8(3) of the Constitution). The second phase is the submission of the names and headquarters of the new Local Government Areas to the National Assembly for listing in Part I of the First Schedule to the Constitution (sections 8(5) and (6) of the Constitution). Therefore, a State Government cannot claim to have created a Local Government Area until the name and headquarter of the Local Government Area has been submitted to the

<sup>3</sup> Constitution of Nigeria, *op cit* note 1, section 8(3).

<sup>4</sup> *Ibid*, section 8(5) and (6).

National Assembly and listed in the Constitution. A House of Assembly of a State cannot unilaterally create Local Government Areas without recourse to the National Assembly.

In Nigeria, there are presently, 768 Local Government Areas of the 36 States of the Federation and 6 Area Councils of the Federal Capital Territory, Abuja.<sup>5</sup> It is only the Federal Capital Territory that has and can create Area Councils. The names of all Local Governments Areas in Nigeria are stated in Part 1 of the First Schedule to the Constitution and the Area Councils are listed in Part II of the First Schedule to the Constitution of Nigeria.

Each State of the federation makes a law for the establishment, structure, composition, finance and functions of Local Governments Areas in the State.<sup>6</sup> For example, in Oyo State, the law governing Local Government System is the Local Government Law, 2001 (as amended), in Ebonyi State, it is the Local Government Area Law, 2001 and in Nassarawa State, it is the Local Government Law 2009. Also, the House of Assembly of a State makes laws for the establishment of democratically elected Local Government Councils to administer the Local Government Areas as stipulated under section 7(1) of the Constitution. Elections are periodically conducted into the Local Government Councils.

Elections into Local Government Councils are conducted by the State Independent Electoral Commission established under section 197(1)(b) of the Constitution. The constitutional duties of the State Independent Electoral Commission are to – (a) organise, undertake and supervise all elections into Local Government Councils within the State;<sup>7</sup> (b) render necessary advice to the Independent National Electoral Commission on the compilation of the register of voters as applicable to Local Government elections in the State.<sup>8</sup> Each State creates the State Independent Electoral Commission under a law. For example, in Oyo State, the State Independent Electoral Commission is established under section 3 of the State Independent Electoral Commission Law of Oyo State with the power to conduct elections into Local Government Councils under section 5 of the law.<sup>9</sup> In Nassarawa State, the State Independent Electoral Commission is established under section 1 of the Nassarawa State Independent Electoral Commission Law 1999 with the power to organize and undertake elections under section 6 of the law. Also, the Nassarawa State Local Government Election Law 2003 gives the Nassarawa State Independent Electoral Commission the power to conduct elections into Local Government Councils.<sup>10</sup>

### **Creation and Administration of Local Council Development Areas under State Laws**

Local Council Development Areas and other similar bodies such as Development Areas are created by the House of Assembly of a State. These administrative bodies are created in the same way Local Government Areas are created but under a different name. In some cases, the House of Assembly of the State created new Local Government Areas under section 8(3) but failed to

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<sup>5</sup> *Ibid*, section 3(6) of the Constitution.

<sup>6</sup> *Ibid*, section 7(1).

<sup>7</sup> *Ibid*, Paragraph 4(a), Part II of the Third Schedule.

<sup>8</sup> *Ibid*, Paragraph 4(b), Part II of the Third Schedule.

<sup>9</sup> State Independent Electoral Commission Law Cap. 154, Laws of Oyo State 2000.

<sup>10</sup> Sections 2 and 3 of the Nassarawa State Local Government Election Law 2003.

complete the process as stipulated under sections 8(5) and (6) of the Constitution which involves submission of the names and headquarters of the newly created Local Government Areas to the National Assembly so that they can be listed in the Constitution. Due to this defect, they changed the names of the Local Government Areas to Local Council Development Areas. In Lagos State for example, in the year 2004, the House of Assembly created fifty-seven (57) Local Government Areas under the Local Government Areas Law No. 5, 2002 of Lagos State and even conducted elections into them. The matter was challenged in court in the case of Attorney-General of Lagos State *vs* Attorney-General of the Federation.<sup>11</sup> As a result, the Government of Lagos State amended the Local Government Areas Law and changed the names of the Local Government Areas to Local Council Development Areas. Presently, in Lagos State, there are 20 Local Government Areas recognized under the Constitution and 57 Local Council Development Areas not recognized by the Constitution.

In Ebonyi State, the House of Assembly created twenty one (21) new Local Government Areas under the Local Government Area Law No. 7 of 2001 (as amended). The names of the Local Government Areas were changed afterwards, to Development Areas. More Development Areas were later created bringing it to a total of sixty-four (64) through the amendment of the Local Government Area Law. Ebonyi State now has thirteen (13) Local Government Areas recognized under the Constitution of Nigeria and 64 Development Areas not recognized by the Constitution. Similarly, in Nassarawa State, the House of Assembly created sixteen (16) Development Areas under the Nassarawa State Local Government Law, No. 5 of 2009. This was in addition to the thirteen (13) constitutionally recognized Local Government Areas. Presently, in Nassarawa State, there are 13 Local Government Areas stated in the Constitution and 16 Development Areas not stated in the Constitution.

Local Council Development Areas and Development Areas are administered by committees appointed by the State Governor. This is because there are no constitutional provisions for their administration since they are not listed in the Constitution. In Nassarawa State, for instance, each Development Areas is administered by a Development Area Management Committee. Section 72 of the Local Government Law, 2009 (as amended) of Nassarawa State provides that there shall be for each Development Area, a Development Area Management Committee which shall comprise of the following members – (a) Development Area Administrator; (b) four full time members; (c) the Development Area Director of Personnel Management who shall serve as the Secretary of the Development Committee. Members of this committee are appointed by the Governor of Nassarawa State,<sup>12</sup> for a period of three years.<sup>13</sup>

Local Council Development Areas and Development Areas are administered in the same manner as Local Government Areas. Some States have even gone to the extent of conducting elections into Local Council Development Areas in the same way and at the same time elections are

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<sup>11</sup> (2004) 18 NWLR Pt. 904, p.1.

<sup>12</sup> Local Government Law, 2009 (as amended) of Nassarawa State, section 73.

<sup>13</sup> *Ibid*, section 74.

conducted into Local Government Councils.<sup>14</sup> For example, in the year 2018, Oyo State Government conducted elections into the 33 Local Government Councils and the 35 Local Council Development Areas in the State.<sup>15</sup>

Conducting elections into Local Council Development Areas is illegal. This is because the Constitution does not make provision for Local Council Development Areas. A State Government that conducts election into such bodies violates the provisions of the Constitution. It amounts to altering the provisions of the Constitution and therefore, null and void. The Federal Government of Nigeria should challenge such act in the court of law. Also, the State Independent Electoral Commission should stop conducting elections into unconstitutional bodies such as Local Council Development Areas. The Commission has a constitutional duty under Paragraph 4 of Part II of the Third Schedule to the Constitution to conduct elections only into Local Government Councils which are listed in the Constitution and not Local Council Development Areas not recognized by the Constitution. In the case of Oyo State, the State Electoral Commission ought to have conducted elections into only the thirty-three (33) Local Government Areas of Oyo State stated in the Constitution. Sadly however, the Electoral Commission went ahead to conduct elections into both the 33 Local Government Councils and 35 Local Council Development Areas of Oyo State.

### **Financing Local Council Development Areas**

Generally, Local Council Development Areas, Development Areas and other similar bodies are funded by the State. In Oyo State, section 4(1)(f) of the Local Government Law, 2001 (as amended) provides that Local Council Development Areas shall be funded by the State. However, in Nassarawa State the Development Areas receive funds from Statutory Allocations and Internally Generated Revenue. Section 78 of the Local Government Law, 2009 (as amended) of Nassarawa State provides that funds shall be distributed between Local Government Areas and Development Areas, after the following deductions - (a) salaries and allowances of political office holders, elected and appointed Local Government staff and teachers; (b) other statutory deductions i.e. 15% pension, 1% training funds and 15% Traditional Council. Furthermore, section 79 provides that funds distributed to the Local Government and Development Area shall be based on the ratio 55:45 in the case of one Development Area and ratio 40:30:30 in the case of two Development Areas. Funding Local Council Development Areas or Development Areas is inconsistent with the provisions of the Constitution.<sup>16</sup> The Constitution does not give State Governments the power to create or fund Local Council Development Areas, Development Areas or other similar bodies. As a matter of fact, these bodies are unknown to the Constitution of Nigeria. Unfortunately, the trend has continued unabated.

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<sup>14</sup> Constitution of Nigeria, *op cit* note 1, section 7(4).

<sup>15</sup> Punch Newspaper, (13 May 2018) "APC Sweeps Oyo LG Poll, Wins All Chairmanship, Councillorship Seats" available at <https://punchng.com/apc-sweeps-oyo-lg-poll-wins-all-chairmanship-councillorship-seats/> (last viewed on 28 June 2020).

<sup>16</sup> Constitution of Nigeria, *op cit* note 1, section 1(3).

## **FACTORS FACILITATING THE CREATION OF LOCAL COUNCIL DEVELOPMENT AREAS IN NIGERIA**

There are certain factors that facilitate the creation of Local Council Development Areas and similar administrative bodies in Nigeria. These are examined below.

### **Failure of the Federal Government of Nigeria to Challenge the Creation and Operation of Local Council Development Areas**

The Federal Government of Nigeria through the office of the Attorney-General of the Federation has failed to challenge the creation of Local Council Development Areas and Development Areas in Nigeria. States have continued to create these unconstitutional bodies, but the Federal Government has kept silent, rather than file a law suit against such act.

The provisions of the Constitution are clear on the issue of creation of Local Government Areas, the House of Assembly of a State lacks the power to create Local Council Development Areas, Development Areas or other similar bodies such as Area Development Councils created by the Niger State Government.<sup>17</sup> This non-challant attitude displayed by the Federal Government, has greatly facilitated the creation of these illegal bodies. It appears to have given some backing to the act even though in actual fact it is illegal. The Federal Government should not allow such practice to continue unabated because Nigeria runs a democratic process in which there is the rule of law. The Constitution must be respected and obeyed. No State Government should be allowed to do what it likes, rather, it must abide by what the Constitution provides. The federal executive arm of government has the power of execution and maintenance of the Constitution under section 5(3) of the Constitution. It should therefore do all within its power to ensure that State Governments comply fully with the requirements for creating Local Government Areas under sections 8(3), 8(5) and 8(6) of the Constitution and should stop the creation and operation of Local Council Development Areas, Development Areas and similar bodies in Nigeria.

### **Failure of the National Assembly to Caution State House of Assembly**

The National Assembly of Nigeria has failed to caution the House of Assembly of States against creating Local Council Development Areas, Development Areas and other similar bodies. Creation of Development Areas is done by the House of Assembly of a State in contravention of the provisions of the Constitution.<sup>18</sup> Section 4(5) of the Constitution provides that if any Law enacted by the House of Assembly of a State is inconsistent with any law 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. The Constitution is a law made by the National Assembly but Local Council Development Areas and Development Areas are created by a law of the House of Assembly of a State, thus, since the creation of these bodies is inconsistent with the Constitution, they are null and void. Similarly, section 1(3) of the Constitution provides that if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other

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<sup>17</sup> Commonwealth Parliamentary Association, "The Parliament of Niger, Nigeria" available at <http://www.cpahq.org/cpahq/core/parliamentInfo.aspx?Committee=NIGER> (last viewed 11 August 2020).

<sup>18</sup> Constitution of Nigeria, *op cit* note 1, sections 8(3), (5) and (6).

law shall, to the extent of the inconsistency, be void. This is because the Constitution is supreme.<sup>19</sup> Since the creation of Local Council Development Areas and Development Areas is inconsistent with the provisions of the Constitution, they are null and void.

The National Assembly of Nigeria ought to have cautioned the State Houses of Assembly against repeated creation of Local Council Development Areas and Development Areas knowing that it violates the provisions of the Constitution. But it has deliberately kept silent, thereby facilitating the continuous creation of Local Council Development Areas and Development Areas by Houses of Assembly of States in Nigeria.

### **Attitude of the Supreme Court of Nigeria**

The Supreme Court of Nigeria is the apex court. It has the power to make final pronouncements on the illegality of creation of Local Council Development Areas and other similar bodies and grant injunctions restraining the House of Assembly of a State from continuously breaching the provisions of the Constitution in this regard. It had the opportunity to do so in the case of Attorney-General of Lagos State *vs* Attorney-General of the Federation<sup>20</sup> but refused to do it. In that case, the House of Assembly of Lagos Government created 57 Local Government Areas out of the existing constitutionally recognized twenty (20) Local Government Areas. The names and headquarters of the Local Government Areas were not submitted to the National Assembly for inclusion in the Constitution. The Government of Lagos State also conducted elections into these new Local Government Areas. In reaction, the Federal Government refused to release the revenue for the newly created Local Government Areas stating that the 57 new Local Government Areas are unknown to the Constitution. Aggrieved, the Attorney General of Lagos State filed an action in court against the Attorney General of the Federation for non-payment of revenue due to the Local Government Areas in Lagos State. The Federal Government sought a declaration that the newly created 57 Local Government Areas, not having being listed in the Constitution were illegal, null and void, and that the Government of Lagos State had no power to conduct elections into them. The Supreme Court held that the creation of Local Government Areas is incomplete without their names and headquarters submitted to the National Assembly and included in the Constitution. It also held that although, the Federal Government of Nigeria is under a duty to release revenue due to constitutionally recognized Local Government Areas in each State of Nigeria from the federation allocation; it is not under a duty to release revenue to Local Government Areas that are not listed in the Constitution. It thus, held that the Federal Government should release the revenue belonging to the 20 Local Government Areas of Lagos State stated in the Constitution. The Supreme Court however, declined to make a declaration that election into the newly created Local Government Areas was unconstitutional, null and void, on the ground that the necessary parties namely - the chairman-elect and the Lagos State Independent Electoral Commission were not joined as parties in the case.

The refusal of the Supreme Court to make necessary declaration against conducting elections into newly created Local Government Areas yet to be listed in the Constitution, appear to have given

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<sup>19</sup> *Ibid*, section 1(1).

<sup>20</sup> (2004) 18 NWLR Pt. 904, p.1.

State Governments the liberty to create Local Council Development Areas and Development Areas. The Court ought to have given a declaration on this all important issue by declaring Local Government Areas not stated in the Constitution, null and void and granting an injunction restraining them from operating. This would have helped curb the act of operating unconstitutionally recognized Local Government Areas and would have abated this illegal trend which is now done with impunity by some State Governments in Nigeria.

### **Need to Bring Government Closer to the People**

Some States Governments have claimed that Local Council Development Areas and Development Areas were created in order to bring government closer to the people for the purpose of grassroot development. Some Local Governments Areas are big and this has prevented the people from feeling the impact of governance, hence the need to create more Local Governments out of them. The purpose of Local Government Areas is for the growth and development of local areas. Thus, as good as it appears, creation of Local Government must be done within the ambit of the law. Creation of Local Council Development Areas and Development Areas is a sign that the State Government have failed to comply with all the requirements for creation of Local Government Areas as stated in the Constitution. This is indeed a misuse of the power given to House of Assembly of States under the Constitution.

### **CONCLUSION**

The Constitution is supreme. It is above every person and government, therefore, no person or government should be allowed to alter its provisions by creating Local Council Development Areas or other administrative bodies that are not recognized by the Constitution. The Constitution only recognizes Local Government Areas and gives the State House of Assembly the power to create them and not Local Council Development Areas or Development Areas. A State House of Assembly should therefore not be allowed to utilize the power given to it by the Constitution to create Local Government Areas in creating unconstitutional bodies such as Local Council Development Areas or Development Areas. The Federal Government, courts of law and other stakeholders should take all necessary steps to ensure that this illegal trend is abated.

### **Recommendations**

The Federal Government of Nigeria should file legal actions in court against States that created Local Council Development Areas and Development Areas in Nigeria. In line with the provisions of the Constitution, courts of law in Nigeria should be bold to declare the creation of such illegal bodies, unconstitutional, null and void and should restrain erring States from operating them.

The National Assembly being the highest law making body in Nigeria should caution State Houses of Assembly, warning them to desist from misusing the powers given to them under the Constitution to create Local Government Areas in creating illegal Local Council Development Areas and Development Areas.

States that desire to create new Local Government Areas should fully comply with the procedure for creating new Local Government Areas as stipulated under sections 8(3), (5) and (6) of the



Constitution of Nigeria. They must desist from partial compliance which amounts to a violation of the Constitution.

Finally, the National Assembly should remove the bottlenecks and address the challenges associated with creation of new Local Government Areas. This will encourage State Governments to totally comply with the requirements for creation of Local Government Areas as stipulated under sections 8(3), (5) and (6) of the Constitution.