
LEGALITY OF THE DISSOLUTION OF ELECTED LOCAL GOVERNMENT COUNCILS IN OYO STATE, NIGERIA

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ABSTRACT: *This paper examines the illegal trend of dissolution of elected Local Government Councils before the expiration of their tenure by the State Governor and their replacement with caretaker committees in Oyo State. It argues that although, the State Government has constitutional powers to create Local Government Councils and conduct elections into same, it does not have the power to dissolve elected Local Government Councils before the expiration of their tenure. Considering the trends in Oyo State and some other States in Nigeria, this paper finds that certain factors are responsible for the prevalence of dissolution of Local Government Councils which have resulted in various negative effects such as violation of the provisions of the Constitution of the Federal Republic of Nigeria and rights of members of the Councils to govern. Such actions truncate democratic process and forces unelected persons on the citizens. The paper concludes that to curb the practice of illegal dissolution of Local Government Councils, the courts of law must ensure the reinstatement of dissolved Councils and Federal Government of Nigeria must take concrete steps to grant autonomy to all Local Government Councils in the country.*

KEYWORDS - constitution, democratically elected, dissolution, local government council, state government.

INTRODUCTION

In Nigeria, the Local Government Council is the third tier of government. It was established to promote development at the grass root level.¹ Section 7(1) of the Constitution of the Federal Republic of Nigeria guarantees the existence of democratically elected Local Government Councils and mandates State Governments to ensure their existence under a law which provides for their establishment, structure, composition, finance and functions. Section 7(4) of the Constitution provides that the Government of a State shall ensure that every person who is entitled to vote or be voted for at an election to House of Assembly of a State, shall have the right to vote or be voted for at an election into a Local Government Council. Thus, a combination of section 7(1) and section 7(4) of the Constitution gives State Governments the power to conduct elections into and ensure that only elected Local Government Councils are in office. In Oyo State, elections into Local Government Councils are conducted by the State Independent Electoral Commission established under section 3 of the State Independent Electoral Commission Law 2000 of Oyo State

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¹ T.C. Adetiba, "Existentiality of Local Government in Nigeria an Answer to Grassroots Development, but for Unsolicited Socio-Political Factors" *Acta Universitatis Danubius*, Vol. 9, No.2, (2017), p. 25.

(as amended).² Section 5 of the Law empowers the Commission to conduct elections into Local Government Councils in Oyo State.

However, although, the State Government has the power to make laws for the administration of Local Government Councils and conduct elections into same, it does not have the power to dissolve elected Councils before the expiration of their tenure. Local Government Councils can only be dissolved upon the expiration of their tenure as stipulated by law. Unfortunately, in Nigeria, dissolution of elected Local Government Councils has become common place. In May 2019, the Governor of the Oyo State dissolved the 33 elected Local Government Councils and 35 Local Council Development Areas in the State and replaced them with caretaker committees. This was done inspite of the fact that the apex court – Supreme Court of Nigeria had strongly condemned such act in similar cases such as the case of Governor Ekiti State & Ors v Olubunmo & Ors.³ This paper examines the trend of dissolution of elected Local Government Councils in Oyo State and the factors responsible for such act. It examines the Local Government System in Oyo State, election into the Local Government Councils and the duration of the tenure of the Councils under the Local Government Law, 2001 (as amended) of Oyo State. It also considers judicial decisions on this matter. It concludes with recommendations on measures to be carried out in order to curb the trend of unlawful dissolution of elected Local Government Councils in Oyo State and Nigeria as a whole.

Local Government System in Oyo State

The Constitution of the Federal Republic of Nigeria⁴ guarantees the establishment of democratically elected Local Government Councils and mandates State Governments to ensure their existence under a law for their establishment, structure, composition, finance and functions.⁵ In Oyo State (a State in the western part of Nigeria), the law governing the establishment and administration of Local Government System is the Local Government Law, 2001 (as amended). Section 3(1) of the Law provides that the system of Local Government shall be by democratically elected Local Government. Oyo State consists of 33 Local Government Councils and 35 Local Council Development Areas. The Local Government Areas are listed in Part 1 of the First Schedule to the Constitution and in the Second Column of Schedule 1 to the Local Government Law, 2001 of Oyo State. The Local Council Development Areas were created in the year 2016 under section 4 of the Local Government (Further Amendment) Law, 2016 which amended section 4(1) of the Local Government Law, 2001 and Schedule 1 to the law. The power to create Local Government Council is derived from section 8(3) of the Constitution which gives the House of Assembly of a State the power to create new Local Government Areas.

² State Independent Electoral Commission Law 2000 of Oyo State (as amended) Cap. 154, Laws of Oyo State 2000.

³ (2016) LPELR-48040(SC).

⁴ Constitution of the Federal Republic of Nigeria Cap. C23 Laws of the Federation of Nigeria 2004.

⁵ Ibid, section 7(1). However, section 7(1) of the Constitution is subject to section 8(3) and section 8(4) of the Constitution. Section 8(3) gives the House of Assembly of a State the power to create new Local Government Areas while section 8(4) gives the House of Assembly of a State the power to adjust the boundary of an existing Local Government.

However, the Constitution requires that the names and headquarters of the newly created Local Government Councils must be submitted to the National Assembly for listing in Part I of the First Schedule to the Constitution.⁶ It is after this has been done that they are legally recognized as Local Government Councils in Nigeria. In Oyo State, the names and headquarters of the Local Council Development Areas are yet to be listed in the Constitution, they are therefore, not constitutionally recognized as Local Government Areas in Nigeria.

Under the Constitution of Nigeria, the phrases “Local Government Council” and “Local Government Area” are used interchangeably, but both have the same meaning. In section 7 and the Fourth Schedule to the Constitution, the phrase “Local Government Council” is used while in sections 8(3) and (4) and Part I of the First Schedule to the Constitution, the phrase “Local Government Area” is used. However, the two phrases are unified under section 318 of the Constitution which provides that "Local Government Area" or "Local Government Council" includes an area council, indicating that both phrases are synonymous and can be used interchangeably. To affirm this, the Supreme Court of Nigeria, in the case of Attorney-General of Lagos State v. Attorney-General of the Federation,⁷ held that under the Constitution, both “Local Government Area” and "Local Government Council" mean the same and can be used interchangeably.

The relevant provisions of the Local Government Law, 2001 (as amended) of Oyo State are examined below under the following sub-headings (a) Composition of Local Government Councils; (b) Functions of Local Government Councils; (c) Sources of Revenue of Local Government Councils; (d) Election into Local Government Councils; (e) Dissolution of Local Government Councils; (f) Reasons for Dissolution of Local Government Councils: and (g) Effects of Dissolution of Local Government Councils.

Composition of Local Government Councils

Local Government Councils consist of executive and legislative arms. The executive arm comprises of the Chairman, Vice-Chairman, Supervisory Councillors and Secretary to the Council. There are also employees working with the Local Government Councils. The offices of the Chairman and Vice-Chairman are established under section 14 of the Local Government Law, 2001 (as amended). Elections are conducted into the offices of Chairman and Vice-Chairman. This is because section 18(1) of the Local Government Law provides that the offices of the Chairman and Vice Chairman must be subject to elections and no Chairman can contest for elections without a Vice Chairman.

The Chairman assigns to the Vice-Chairman specific responsibilities in respect of the business of the Local Government including membership of the Security Committee.⁸ The Chairman presides over meetings of the Local Government Council.⁹

⁶ Ibid, section 8(5) and (6).

⁷ (2004) 18 NWLR Pt. 904, p.1.

⁸ Local Government Law, 2001 (as amended) of Oyo State, section 24(1).

⁹ Ibid, section 24(3).

The Secretary¹⁰ and Supervisory Councillors are not elected into office, they are appointed by the Chairman. However, the appointment of Supervisory Councillors is subject to the confirmation of the Local Government Legislative Council made up of the Councillors.¹¹ The law allows the Chairman to appoint a minimum of three and maximum of five Supervisory Councillors. Section 47(1) of the Local Government Law provides that there shall be not less than three and not more than five offices of Supervisory Councillors of the Local Government. The Chairman assigns responsibilities to the Supervisory Councillors including administration of any department of the Local Government.¹² The Secretary performs various duties including – (a) serving as the Secretary and Chief Administrative Adviser to the Local Government Chairman and to the Council's Finance and General Purposes Committee; (b) coordinating the activities of all departments of the Local Government; (c) servicing the meetings of the Chairman and the Supervisory Councillors wherever necessary; (d) interacting with the Councillors; (e) keep the records of the Local Government; (f) perform other duties as may be assigned to him from time to time by the Chairman of the Local Government.¹³ In running the affairs of the Local Government, the executive arm is assisted by career officers, principal among them is the Head of Local Government Administration. He is in charge of the administration of the Local Government. All Heads of Departments in the Local Government and the Treasurer of the Local Government (Director of Finance) are under the supervision of the Head of Local Government Administration. With respect to the legislative arm of the Local Government, it comprises of elected Councillors and they form the Local Government Legislative Council.¹⁴ Councillors are elected into the Council from each ward of the Local Government.¹⁵ In the Local Government Legislative Council, there is a Leader and a Deputy Leader who are elected among the Councillors.¹⁶ Functions of the Legislative Council include – confirming the appointment of Supervisory Councillors;¹⁷ approving the budget of the Local Government;¹⁸ and passing laws called bye-laws which are assented to by the Chairman.¹⁹ However, where the Chairman withholds his assent, the bye-law can be passed by two thirds majority of the Council and the assent of the Chairman shall not be required.²⁰ The Council also has the power to summon anyone to appear before it and explain issues concerning the Local Government Council.²¹

¹⁰ Ibid, section 50(1) establishes the office of the Secretary to the Local Government.

¹¹ Ibid, section 47(2) establishes the office of Supervisory Councillor.

¹² Ibid, section 24(2).

¹³ Ibid, section 51.

¹⁴ Ibid, section 33(1).

¹⁵ Ibid, section 27.

¹⁶ Ibid, section 34(1).

¹⁷ Ibid, section 47(2) establishes the office of Supervisory Councillor.

¹⁸ Ibid, section 42(3).

¹⁹ Ibid, section 41(4).

²⁰ Ibid, section 46(6).

²¹ Ibid, section 42(4).

Functions of Local Government Councils

The functions of Local Government Councils in Nigeria are contained in the Fourth Schedule to the Constitution.²² These functions are also stated in section and 6 of the Local Government Law 2001 of Oyo State. The main functions of Local Government Councils are - (a) consideration and the making of recommendations to a State commission on economic planning or any similar body on - (i) the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected and (ii) proposals made by the said commission or body; (b) collection of rates, radio and television licences; (c) establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm; (d) licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts; (e) establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences; (f) construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, garden, open spaces or such public facilities as may be prescribed from time to time by the House of Assembly of a State; (g) naming of roads and streets and numbering of houses; (h) provision and maintenance of public conveniences, sewage and refuse disposal; (i) registration of all births, deaths and marriages; (j) assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State; and (k) control and regulation of (i) out-door advertising and hoarding, (ii) movement and keeping of pets of all description, (iii) shops and kiosks, (iv) restaurants, bakeries and other places for sale of food to the public, (v) laundries, and (vi) licensing, regulation and control of the sale of liquor.²³

Other functions of Local Government Councils are - participation in the government of a State with respect to the following matters - (a) the provision and maintenance of primary, adult and vocational education (b) the development of agriculture and natural resources, other than the exploitation of materials; (c) the provision and maintenance of health services; and (d) such other functions as may be conferred on a Local Government Council by the House of Assembly of the State.²⁴

Sources of Revenue of Local Government Councils

Statutorily, Local Government Councils receive revenue from the Federation and State Accounts. In essence receive revenue from Federal and State Governments. They also generate revenue internally. With respect to revenue from the Federation Account, section 162(3) of the Constitution provides that any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly. The amount standing to the credit of Local Government Councils in the Federation Account is allocated to the State for the benefit of the Local Government Councils in the State as prescribed by the National

²² Constitution of Nigeria, note 6, Section 7(5) provides that the functions of the Local Government Council must include those set out in the Fourth Schedule to the Constitution.

²³ Ibid, Paragraph 1 of the Fourth Schedule.

²⁴ Ibid, Paragraph 2 of the Fourth Schedule.

Assembly.²⁵ This amount is paid into the State Joint Local Government Account. Section 162(6) of the Constitution mandates each State to create a special account called "State Joint Local Government Account" into which is paid all allocations to the Local Government Councils in the State from the Federation Account and from the Government of the State. In Oyo State, the "State Joint Local Government Account" was created under section 8(1) of the Local Government Law, 2001 (as amended). Section 8(2) of the Law provides that all allocations to the Local Government Councils from the Federation Account must be paid into the State Joint Local Government Account. Similarly, section 3 of the State Joint Local Government Account (Distribution) Law, 2002 (as amended) provides that the State Government shall maintain a special account to be called the State Joint Local Government Account into which shall be paid all allocations to Local Government Councils of the State from the Federation Account and from the Government of the State.

With respect to revenue from the State Government account, section 162(7) of the Constitution provides that each State must pay Local Government Councils in its area of jurisdiction such proportion of its total revenue on the terms and in the manner prescribed by the National Assembly. This revenue is in addition to the revenue allocation from the Federation Account given to Local Government Councils and must be paid into the State Joint Local Government Account. The National Assembly determines the percentage of the revenue of the State Government to be given to Local Government Councils through an Act. This law is the Allocation of Revenue (Federation Account, Etc.) Act.²⁶ Section 4(1) of the Act provides that in addition to the allocation made from the Federation Account to Local Government Councils, there shall be paid by each State in the Federation to the State Joint Local Government Account in each quarter of the financial year, a sum representing ten per cent (10%) of the internally-generated revenue for that quarter of the State concerned. The ten per cent must be distributed among the Local Governments in the State on such terms and manner prescribed by the State House of Assembly.²⁷

With respect to Local Council Development Areas, section 4(1)(f) of the Local Government Law, 2001 of Oyo State provides that a Local Council Development Area shall be funded by the State. Thus, they do not receive allocations directly from the Federation Account.

Elections into Local Government Councils

In every State of Nigeria, elections are conducted into Local Government Councils by the State Independent Electoral Commission established under section 197(1)(b) of the Constitution.. Similarly, In Oyo State, the State Independent Electoral Commission is established under section 3 of the State Independent Electoral Commission Law of Oyo State.²⁸

Under the Constitution of Nigeria, the duties of the State Independent Electoral Commission is to – (a) organise, undertake and supervise all elections into Local Government Councils within the

²⁵ Ibid, section 162(5).

²⁶ Allocation of Revenue (Federation Account etc.,) Act Cap. A15, Laws of the Federation of Nigeria, 2004.

²⁷ Ibid, Section 4(2).

²⁸ State Independent Electoral Commission Law Cap. 154, Laws of Oyo State 2000.

State;²⁹ (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.³⁰ The same duties are stated in section 5 of the of the State Independent Electoral Commission Law of Oyo State.

In the year 2018, the State Independent Electoral Commission of Oyo State conducted elections into the 33 Local Government Councils and the 35 Local Council Development Areas in the State.³¹ Elections were conducted into the offices of - Chairman, Vice Chairman and Councillors. Conducting elections into Local Government Councils³² is recognized by law,³³ but conducting elections into the 35 Local Council Development Areas which have not been listed in the Constitution, is illegal.

Dissolution of Local Government Councils

The Constitution of Nigeria does not contain any specific provision on dissolution of Local Government Councils. However, under the Local Government Law, 2001 (as amended) of Oyo State, section 10 provides that the Local Government Council stands dissolved at the expiration of a period of 3 years commencing from the date of the first sitting of the Council. This implies that each Council becomes dissolved automatically as soon as the 3 year tenure of its members' expire and fresh elections must be conducted. Ideally, such elections should be conducted some months before the expiration of the tenure of the Council, in order to avoid creating a vacuum and resist the temptation of appointing unelected persons to administer the Local Government. Unfortunately, this is not so in Oyo State and in most States in Nigeria. Rather than conduct elections at the appropriate time, the State Governors appoint committees under the names of - caretaker committee, transition committee or administrators and they remain in office for as long as the Governor pleases.

This has been the situation in Oyo State for a number of years even in previous administrations. The immediate former Governor of Oyo State – Abiola Ajimobi, from the beginning of his administration in year 2011 up to year 2018 (a year before his tenure expired) appointed caretaker committees to administer the Local Government Councils and Local Council Development Area in the State.³⁴ He only conducted elections into the Local Government Councils and Local Council Development Areas in May 2018, just before he left office. His predecessor in office – Adebayo Alao-Akala also appointed caretaker committees to run all Local Government Councils in Oyo

²⁹ Constitution of Nigeria, note 4, Paragraph 4(a), Part II of the Third Schedule.

³⁰ Ibid, Paragraph 4(b), Part II of the Third Schedule.

³¹ 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).

³² All 768 Local Government Councils in Nigeria are stated in section 3(6) and listed in the in the second column of Part I of the First Schedule to the Constitution.

³³ Section 7(4) of the Constitution of Nigeria and section 5 of the State Independent Electoral Commission Law of Oyo State.

³⁴ PM News Nigeria, (August 8, 2011) “Ajimobi Swears-In LG Caretaker Chairmen” available at <https://www.pmnewsnigeria.com/2011/08/08/ajimobi-swears-in-lg-caretaker-chairmen/> (last viewed 26 June 2020).

State throughout his tenure from 2007 to 2011.³⁵ After being sworn in as Governor, he dissolved the elected Local Government Councils who were sworn in May 2007 by his predecessor in office - Senator Rashidi Ladoja.³⁶ Similarly, Senator Rashidi Ladoja ran the Local Government Councils through caretaker committees appointed by him, from 2003 till May 2007 when he conducted elections just before leaving office.³⁷ There is therefore an established unconstitutional trend of appointing caretaker committees to administer Local Government Councils in Oyo State. Some of the Governors only conduct elections when they are about completing their tenure. These newly elected Councils are later dissolved by a new subsequent Governor.

In the year 2019, the incumbent Governor of Oyo State - Engr. Seyi Makinde dissolved all elected 33 Local Government Councils and 35 Local Council Development Areas in the State and replaced them with caretaker committees.³⁸ Members of the Councils were elected and sworn into office in May 2018.³⁹ To stem this ugly trend, the Attorney General of the Federation and Minister of Justice of Nigeria wrote to the Governor of Oyo State and other affected States to reinstate the dissolved elected Local Government Councils in their States in line with section 7 of the Constitution.⁴⁰ The Attorney General of the Federation of Nigeria also directed the Inspector General of Police to ensure that the Governor of Oyo State complies with the provisions of the Constitution.⁴¹ The Inspector General of Police later instructed the Commissioner for Police in Oyo State to ensure that the dissolved elected Local Government Councils are reinstated and allowed to occupy their offices in the Local Government. To prevent this from happening, Oyo State Government filed an interim application at the High Court of Oyo State asking for the grant of an interim injunction to restrain the Council members, Attorney General of the Federation, the Inspector General of Police, Commissioner of Police and the Oyo State APC chairman from reinstating the dissolved Council members through forceful takeover of the Council offices, stating that this could cause a breach of peace in Oyo State. The court granted the interim injunction. As a result, the Governor directed the members of the caretaker committee appointed by him to remain in office pending the hearing

³⁵ This Day Newspaper, (1 June 2007) "Nigeria: Akala Swears in LG Caretaker C'ttees" available at <https://allafrica.com/stories/200706010765.html> (last viewed 26 June 2020).

³⁶ This Day Newspaper (4 June 2020) "Akala Dissolves Elected Local Government Council" available at <https://allafrica.com/stories/200706050031.html> (last viewed 26 June 2020).

³⁷ This Day Newspaper (25 May 2007) "Nigeria: Oyo - Ladoja Holds LG Polls Amid Violence" available at <https://allafrica.com/stories/200705250319.html> (last viewed 26 June 2020).

³⁸ This Day News, 27 January, 2020, "Despite Supreme Court Judgment, Oyo, 12 Others Run LGs with Caretakers" <<https://www.thisdaylive.com/index.php/2020/01/27/despite-supreme-court-judgment-oyo-12-others-run-lgs-with-caretakers/>> (accessed 30 March 2020).

³⁹ The Nigerian Lawyers, (24 January, 2020) "Oyo State: IG Directs CP to Effect Reinstatement of LGA, Chairmen and Councillors" available at <https://thenigerialawyer.com/oyo-state-ig-directs-cp-to-effect-reinstatement-of-lga-chairmen-and-councillors/> (last viewed 26 June 2020).

⁴⁰ Vanguard Newspaper, (21 January 2020), "Malami Asks Makinde to Dissolve Councils' Caretaker Committee" available on <https://www.vanguardngr.com/2020/01/malami-asks-makinde-to-dissolve-councils-caretaker-committee/> (last viewed 26 June 2020).

⁴¹ Vanguard News, 27 January, 2020, "Oyo Local Government chairmen defy Makinde, resume with heavy security backing" <<https://www.vanguardngr.com/2020/01/oyo-lg-chairmen-defy-makinde-resume-with-heavy-security-backing/>> (accessed 30 March 2020).

of a motion on notice and determination of the case.⁴² This is unfortunate, because such acts deprive the elected Council members of their rights to governance and to remain in office until the expiration of their tenure. In Nigeria, such a case may drag on for a long time and there may be subsequent appeals up to the Supreme Court of Nigeria and this may take some years. Such elongated period of trial and the cost incurred in the process, wearies aggrieved parties. This is very discouraging for them and forces them to seek other means of settling the matter rather than going through litigation. This appears to be the case with the members of the dissolved Local Government Councils in Oyo State who have now agreed to settle the matter out of court.⁴³

This ugly trend is not limited to Oyo State. Similar acts of dissolution of elected Local Government Councils before the expiration of their tenure had been carried out by the Governors of other States including - Katsina, Borno, Yobe, Kwara, Kogi, Bauchi, Taraba, Benue, Enugu, Anambra, Imo and Ogun States.⁴⁴ This violates section 7(1) of the Constitution which guarantees democratically elected Local Government Councils and mandates States to ensure their establishment through a law. It is therefore unconstitutional, null and void.

The courts in Nigeria have condemned this unconstitutional act through various judgments. For example, in the case of Attorney General of Plateau State & ors v Goyol & ors,⁴⁵ the respondents were elected as Local Government Council Chairmen in Plateau State and sworn into office in April 2004 for a three-year tenure under the Plateau State Local Government Law No. 1 of 1999. Their tenure was to expire in April, 2007. On 12 January, 2007, the State Government passed a law - Local Government Council Law, 2007 which gave the Governor the power to dissolve the Local Government Councils and appointed caretaker committees. Aggrieved by this action, the respondents brought a legal action against the appellants seeking a number of reliefs including a declaration that their tenure of office under the Plateau State Local Government Law No. 1 of 1999 had not expired and a declaration that the act of the Governor in terminating the respondents' term of office was unconstitutional, null and void. The trial court granted all the reliefs sought including an order for the immediate reinstatement of the respondents to their respective positions as Local Government Chairmen in Plateau State. Dissatisfied with the judgment, the appellants appealed to the Court of Appeal. The Court of Appeal dismissed the appeal stating that section 41(4) of the Local Government Law, 2007 of Plateau State was inconsistent with section 7(1) of the Constitution which guarantees democratically elected Local Government Councils, thus, the action of the Government in dissolving the Councils and appointing caretaker committees was unconstitutional.

⁴² Channels Television News, 28 January, 2020, "Court Restrains Sacked Oyo LG Chairmen, IGP, AGF, From Forceful Takeover of Councils" <<https://www.channelstv.com/2020/01/28/court-restrains-sacked-oyo-lg-chairmen-igp-agf-from-forceful-takeover-of-councils/>> (viewed 30 March 2020).

⁴³ This Day News, 6 February, 2020, "Makinde Explores Out-of-court Settlement with Sacked Oyo LG Chairmen" <<https://www.thisdaylive.com/index.php/2020/02/06/makinde-explores-out-of-court-settlement-with-sacked-oyo-lg-chairmen/>> (accessed 30 March 2020).

⁴⁴ This Day News, 27 January, 2020, "Despite Supreme Court Judgment, Oyo, 12 Others Run LGs with Caretakers" <<https://www.thisdaylive.com/index.php/2020/01/27/despite-supreme-court-judgment-oyo-12-others-run-lgs-with-caretakers/>> (accessed 30 March 2020).

⁴⁵ (2007) 16 NWLR (Pt. 1059) 57.

Also, in the case of *Eze v Governor of Abia State*,⁴⁶ the Governor of Abia State dissolved all elected Local Government Councils on 16 June, 2006 when they still had 23 months to complete their tenure and replaced them with caretaker committees. This led the appellants - Chairmen, Vice-Chairmen and Councillors of the dissolved Councils to file an action in court. The trial court found that the appellants were wrongfully removed from office but refused to order their reinstatement because their tenure had expired as at the date of the judgment. The court therefore ordered that they should be paid their salaries and allowances for the residue of the unexpired tenure of their offices. Dissatisfied with the judgment, the appellants appealed to the Court of Appeal. The Court of Appeal found that the appellants were wrongfully removed before the expiration of their tenure and allowed the appeal. The court granted all the reliefs sought except the reinstatement of the appellants to their offices as members of the Local Government Councils. Dissatisfied, the appellants went on appeal to the Supreme Court seeking compensation of N10, 451,989 per year for each of the appellants in lieu of their reinstatement to complete their tenure. The Supreme Court held as follows – “section 7 of the Constitution of Nigeria imposes a duty on the Governor of a State to ensure that the system of Local Government continues unhindered. Accordingly, a Governor’s act of dissolving Local Government Councils and replacing them with caretaker committees amounts to the Governor acting on his whims and caprices, unknown to Nigerian laws, and clearly illegal and undemocratic. It is the duty of the Governor of a State to ensure the existence of Local Government Councils instead of destroying them. In this case, the Court of Appeal was right when it found that the Governor lacked the legal competence to dissolve the elected Local Government Councils and appoint caretaker committees in their stead and that this act was illegal, *ultra vires*, and of no effect whatsoever. Since general elections are held every four years to elect the President, Governors and members of the National and State Legislatures, there is no justifiable reason, except where a state of emergency has been declared, for a State Governor to dissolve a Local Government Council and appoint a caretaker council in its place. Persons elected for a fixed term of years can only be removed from office if found to be in breach of the rules governing their offices or for infamous conduct. If such a person is removed from office in a manner the court finds to be wrong, he shall be entitled to all his entitlement, to wit: salaries, allowances, etc. Thus, since the appellants, were adjudged to be entitled to a three-year tenure of office which they did not fully utilize due to the deliberate actions of the Governor – respondent, they were entitled to a remedy by way of monetary compensation for the unexpired period of their truncated tenure, in view of the fact that they could not be reinstated to complete their tenure”. The Supreme Court ordered the payment of their outstanding salaries and allowances for the 23 months left for them to complete their tenure.

Another case decided by the Supreme Court of Nigeria, is the case of *Governor Ekiti State & Ors v Olubunmo & Ors*.⁴⁷ In this case, on 25 October 2010, the respondents - elected officers of the Local Government Councils in Ekiti State, brought a legal action against the Governor of Ekiti State – the appellant, for a declaration that section 23(B) of the Local Government Administration (Amendment) Law, 2001 of Ekiti State which amended Local Government Administration Law, 1999 of Ekiti State to the effect that the Governor of Ekiti State can dissolve democratically elected

⁴⁶ (2014) 14 NWLR (Pt. 1426) 192.

⁴⁷ (2016) LPELR-48040(SC).

Local Government Councils and replace them with caretaker committees, was in conflict with section 7 of the Constitution of the Federal Republic of Nigeria and thus, null and void; and (ii) a declaration that the tenure of the respondents was statutorily set at three years with effect from the date of their election, specifically from 20 December 2008 to 19 December 2011. While the matter was still in court, the 1st appellant - Governor of Ekiti State, by a radio announcement on 29 October 2010, dissolved the Local Government Councils and removed the respondents, who were elected to the Councils and appointed caretaker committees to oversee the affairs of the Councils. Consequently, the respondents amended the reliefs in their originating summons and in particular, sought three additional reliefs, these are: (i) A declaration that the Governor's (1st appellant's) unilateral dissolution of the democratically elected Local Government Councils in the sixteen Local Government Councils of Ekiti State through radio announcement on 29 October 2010 was a breach of section 7(1) of the Constitution of the Federal Republic of Nigeria and therefore is undemocratic, unconstitutional, null, void and of no effect whatsoever; (ii) A declaration that the composition, constitution, inauguration and/or setting up of caretaker committees in the sixteen Local Government Councils of Ekiti State in place of the democratically elected Local Governments Councils by the Governor was unconstitutional; (iii) A declaration that the tenure of the respondents is statutorily set at three years with effect from the date of their election, specifically from 12 December 2008 to 19 December 2011 and the respondents therefore remained the elected Chairmen of the respective Local Government Councils.

The appellants filed a preliminary objection to the respondents' originating summons. After hearing arguments on the objection, the trial court declined jurisdiction over the suit and struck out the respondents' case. Dissatisfied with the trial court's ruling, the respondents appealed to the Court of Appeal, which held that the trial court had jurisdiction over the suit and allowed the appeal. Invoking its powers under section 15 of the Court of Appeal Act, the Court of Appeal heard the respondents' suit and entered judgment in their favour, by nullifying the provision of section 23B of the Local Government Administration (Amendment) Law, 2001 of Ekiti State which empowered the Governor to dissolve elected Local Government Councils and replace them with caretaker committees. The Court of Appeal ordered the Governor to pay the Chairmen their outstanding allowances and emoluments. The appellants were dissatisfied with the judgment of the Court of Appeal and they appealed to the Supreme Court. The Supreme Court upheld the decision of the Court of Appeal by invalidating section 23B of the Local Government Administration (Amendment) Law 2001 of Ekiti State which was inconsistent with the provisions of the Constitution. In addition, the Supreme Court held that although, the House of Assembly has power to make laws, such laws must be in accordance with the provisions of the Constitution of Nigeria. It does not have the power to make any law that gives the Governor power to truncate a democratically elected Local Government Council. The Court also held that section 7(1) of the Constitution of the Federal Republic of Nigeria guarantees the system of democratically elected Local Government Councils and confers a toga of sacro-sanctity on the elections of such officers whose electoral mandates derive from the will of the people freely exercised through the democratic process. And having been elected for a tenure of three years under the Ekiti State Local Government Administration Law, the respondents could only be removed from office if found to be in breach of the rules governing the office and since this was not the case, they were entitled to

their outstanding allowances and emoluments since they could not be reinstated because their actual three year tenure had expired on 19 December 2011 before judgement was given.

These are laudable court judgments, but unfortunately, they do not appear to abate the trend of illegal dissolution of elected Local Government Councils in Oyo State. Dissolution of democratically elected Local Government Councils has continued with impunity in Oyo State and some other States in Nigeria due to some factors which are considered below.

FACTORS RESPONSIBLE FOR ILLEGAL DISSOLUTION OF ELECTED LOCAL GOVERNMENT COUNCILS

There are certain factors responsible for the prevalence of illegal dissolution of elected Local Government Councils by the State Governor in Nigeria. These factors are stated below as observed by the author.

Enactment of Laws that Empower the Governor to Dissolve Local Government Councils

In some States of Nigeria, the State Government enacts a law that empower the Governor to unilaterally dissolve Local Government Councils and replace them with caretaker committees. This was the situation in the case of Governor Ekiti State and *Ors v Olubunmo and Ors*⁴⁸ in which the State Government enacted section 23(B) and of the Local Government Administration (Amendment) Law, 2001 which amended the Local Government Administration Law, 1999 of Ekiti State to the effect that the Governor can dissolve Local Government Councils in Ekiti State and replace them with caretaker committees. This was the ground on which the Governor dissolved all democratically elected Local Government Councils in Ekiti State on 29 October 2010 before the expiration of their tenure. The State Government should not be allowed to make laws that are inconsistent with the provisions of the Constitution. Section 7(1) of the Constitution provides that there must be democratically elected Local Government Councils in each State of the Constitution, yet some State Governments make laws empowering the Governor to dissolve elected Local Government Councils and appoint unelected committees to administer the Local Governments. This violates 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 and as such cannot be over-ridden by a State law. Therefore, State law empowering the Governor to dissolve elected Local Government Councils and appoint unelected committees to administer the Local Governments is null and void.

In Oyo State, there is presently no law empowering the Governor to dissolve elected Local Government Councils before the expiration of their tenure, yet the Governor has dissolved the Councils.

Slow Pace of Court Trials

Generally in Nigeria, the pace at which matters are determined by courts of law is quite slow. Thus, in cases involving dissolution of elected Local Government Councils, the actual tenure of

⁴⁸ (2016) LPELR-48040(SC).

the Councils would have ended before judgment is given. By the time further appeals are made to the appellate courts, their tenure would have long expired. For example, in the case *Eze v Governor of Abia State*,⁴⁹ the appellants were sworn into office in June 2004 for a three year tenure. On 16 June, 2006 all elected Local Government Council in Abia State were dissolved by the 1st respondent, the State Governor. Trial court gave judgment in October 2007 and Supreme Court gave its judgement in 2014. By the time the trial court gave its judgment, the tenure of the Council had already expired. This made the court order the payment of their allowances and emoluments for the unexpired period of their tenure and this was upheld by the appellate courts. Whereas, if the trial was speedily done, judgment would have been given within the period of their tenure and reinstatement of the Council would have been ordered by the court.

Court Judgments that Order Payment of Allowances and Emoluments in lieu of Reinstatement of Dissolved Local Government Councils

In most cases, the tenure of the aggrieved members of the dissolved Local Government Councils expires before judgment is given at the trial court. This is due mainly to the slow pace of judicial process in Nigeria. State Governors therefore intentionally take advantage of this anomaly in the judicial process by dissolving Local Government Councils and waiting for them to file legal actions against the dissolution, knowing fully well that it will take a long time before the matter is determined by the court, by which time their tenure would have expired. As a result, the court would not order their reinstatement to office but order the payment of their allowances and emoluments for the remaining unexpired period of their tenure in lieu of their reinstatement in office.

By such judgment, the State Governor still has his way because the Local Government Councils remain dissolved. The money used in paying the allowances and emoluments ordered by court, is from the revenue of the State and does not in any way affect the Governor personally. This is indeed sad because it amounts to injustice to the members of the dissolved Local Government Councils who are deprived of their rights to governance for the period of their tenure. This violates the right to participate in government under article 13(1) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of Nigeria⁵⁰ which provides that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with provisions of the law.

Lack of Severe Sanctions Against Governors Who Dissolve Local Government Councils

The Constitution of Nigeria is supreme,⁵¹ and should not be violated by anyone irrespective of his status or class. Section 7 of the Constitution clearly provides that only elected Local Government Councils should be in office and this has been affirmed by the courts. Thus, no Governor has the power to unilaterally alter the provisions of the Constitution by dissolving elected Local Government Councils and replacing them with unelected committees. The problem however, is

⁴⁹ (2014) 14 NWLR (Pt. 1426) 192.

⁵⁰ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A 9 Laws of the Federation of Nigeria 2004.

⁵¹ Constitution of Nigeria, note 4, section 1(1).

that, in Nigeria, Governors do this illegal act and yet they are not severely sanctioned. Although, judgment is entered in favour of the aggrieved members of the dissolved Local Government Councils, and cost awarded against the State Government, there are no sanctions meted out against the erring Governors. This has facilitated the continuous illegal dissolution of Local Government Councils by State Governors.

Party Politics

Most times, State Governors dissolve Local Government Councils that belong to a different political party from that of the Governor. It is generally believed that opposition party members in government will not serve the interest of the Governor, hence the move to dissolve them. However, in situations where the Governor belongs to the same political party as the existing Local Government Council members, it is unlikely that the Governor will dissolve the Councils.

Desire to Have Total Control Over Local Government Councils in the State

Usually, State Governors enjoy having total control over Local Government Councils in their States. This explains why they dissolve existing Councils and replace them with committees or administrators comprising of people known to them. It is believed that by so doing, members of the committee or administrators will be loyal and obedient to the dictates of the Governor. The main cause of this is lack of autonomy of Local Government Councils in Nigeria. The Constitution provides that the revenue allocated to Local Government Councils from the federation account and that from the State must be paid into the State Joint Local Government Account which is controlled by the State Government.⁵² The State then disburses the revenue to the various Local Government Councils. The revenue may be tampered with or withheld by the State Government in order to tame officers of Local Government Councils. This evidently subjects Local Government Councils to the whims and caprices of the State Government since they are in control of the revenue of the Local Government Councils and without revenue, no meaningful development can take place in the Local Government Areas. Thus, when loyalists are appointed as committee members to administer the Local Government Councils, they simply play along with the maneuverings of the State Governor.

Expiration of the Tenure of the Local Government Councils

Section 10 of the Local Government Law, 2001 of Oyo State provides that Local Government Councils stand dissolved at the expiration of a period of 3 years commencing from the date of the first sitting of the Councils. Thus, as soon as the 3 year tenure of the Councils expires, they are automatically dissolved and newly elected Councils are sworn into office. The law does not allow dissolved elected Councils to be replaced with unelected committee. This is because section 3(1) of the Local Government Law provides that the system of Local Government shall be by democratically elected Local Government. The law in Oyo State thus, does not condone Local Government being administered by unelected committees or administrators.

⁵² Ibid, section 162(6).

NEGATIVE EFFECTS OF DISSOLUTION OF LOCAL GOVERNMENT COUNCILS

Dissolution of Local Government Councils has negative effects on the State and the Local Government Areas. These effects are stated below.

Violation of the Provisions of the Constitution of Nigeria and Local Government Law, 2001 of Oyo State (as amended)

Dissolution of Local Government Councils violates the provisions of section 7(1) of the Constitution which guarantees the existence of democratically elected Local Government Councils and mandates State Government to ensure their existence under a Law which provides for their establishment, structure, composition, finance and functions. It also violates section 3(1) of the Local Government Law, 2001 of Oyo State (as amended) which establishes democratically elected Local Government Councils in Oyo State. Thus, dissolving elected Local Government Councils and replacing them with caretaker committees is illegal, null and void.⁵³

Truncating Democratic Process and Violating the Rights of Members of the Dissolved Elected Local Government Councils

Dissolution of elected Local Government Councils before the expiration of their tenure, is undemocratic. The people elected into the Councils are deprived of their rights to govern. Also, the citizens who voted them in are robbed of their rights to be governed by those they elected, while unelected persons are imposed on them. Such unelected persons are never committed to developing the Local Government Areas, improving the lives of the people and good governance, rather their commitment is always to the Governor who appointed them and this is to the detriment of the people. This violates the right to participate in government under article 13(1) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act of Nigeria⁵⁴ which provides that every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with provisions of the law.

Waste of Resources of the State

Huge amount of money and other resources are used in conducting elections into Local Government Councils. Thus, dissolving the Councils before the expiration of their tenure, is a waste of the revenue and resources of the State used in conducting such elections. Also, the money spent on litigation when the State Government is sued in court for illegal dissolution of elected Local Government Councils, is from the account of the State. This is also a waste of the revenue of the State which could be put to good use for the development of the State.

Non-functionality of Local Government Legislative Councils

The legislative powers of a Local Government can only be exercised by the Local Government Legislative Council, consisting of elected Councillors.⁵⁵ They pass bye-laws which are assented

⁵³ Per Ekpe JCA in *Akpan v Umar* (2002) 7 NWLR (Pt. 767) 730.

⁵⁴ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. A 9 Laws of the Federation of Nigeria 2004.

⁵⁵ Local Government Law, 2001 (as amended), section 33.

to by the Chairman of the Local Government.⁵⁶ They make bye-laws on matters pertaining to their functions stated in Fourth Schedule to the Constitution of Nigeria and Schedule 3 to the Local Government Law, 2001 of Oyo State.⁵⁷

When elected Local Government Councils are dissolved and replaced with unelected committees, the legislative functions of the Councils are suspended. This is because unelected committees cannot function as Councillors, thus, no law can be passed by them. This has led to a lot of draw backs and exploitation by the State Government, who sometimes seize such opportunities to mis-manage the revenue of the Local Government Councils or usurp some of the functions of the Councils which yield substantial internal revenue for the Councils.

Absolute Control Over Local Government Councils by the State Governor

One of the reasons for dissolving elected Local Government Councils and replacing them with caretaker committees is so that the Governor can have total control over the members of the Councils. This is politically unhealthy, bearing in mind that the Local Government is the third tier of government in Nigeria and should not be under the absolute control of the State, which is the second tier of government, but should operate independently. No tier of government should be completely subsumed under the other for there to be true federalism. To ensure independence of Local Government Councils, the Federal Government of Nigeria should ensure that the Constitution is amended to grant autonomy to all Local Government Councils in the country.

CONCLUSION

Arbitrary dissolution of elected Local Government Councils by the State Governor and their replacement with unelected caretaker committees, has plagued many Local Government Councils in Nigeria including Oyo State and this has affected the development of the Local Government Areas. The problem has continued to rear up its ugly head despite the provisions of the Constitution and pronouncements of courts of law including the Supreme Court of Nigeria against the unconstitutional act. It is therefore expedient that the illegality be tackled as a matter of urgency. Section 7(1) of the Constitution of Nigeria (as amended) and section 3(1) of the Local Government Law, 2001 of Oyo State (as amended) are sacrosanct on the establishment of democratically elected Local Government Councils and these laws cannot be unilaterally altered by the State Governor. Even the State House of Assembly cannot pass a valid law that is inconsistent with the provisions of section 7(1) of the Constitution. To curb this illegal act, there is an urgent need for the Federal Government to amend the Constitution giving autonomy to all Local Government Councils in Nigeria and also courts of law should be courageous to order the reinstatement of illegally dissolved Council members since they had not completed their tenure as at the time the Councils were illegally dissolved. These amongst other measures will go a long way in abating the undemocratic and unconstitutional act of dissolving elected Local Government Councils in Oyo State and other States of Nigeria.

⁵⁶ Ibid, section 41(1).

⁵⁷ Ibid, section 41(2).

Recommendations

Courts of law, in particular, the Supreme Court of Nigeria, being the apex court should be bold to reinstate the dissolved Local Government Councils for the remaining period of their tenure, rather than ordering that they be paid off their allowances and emoluments for the unexpired period of their tenure just because their tenure had expired by the time judgment is given which is not due to the fault of the aggrieved Council members. This is because as at the time the matter was filed in court their tenure had not expired but was illegally terminated by the Governor. They should also be given remedy for the damage suffered as a result of being suddenly and illegally removed from office. This will discourage the Governors from engaging in the arbitrary act of dissolving Local Government Councils in their States.

Members of the dissolved elected Local Government Councils in Oyo State should shun the proposed out of court settlement if it will not amount to their reinstatement in office. Mere payment of money deprives them of their rights to complete their tenure and will amount to a disregard of the wish of the citizens that voted them in.

The Federal Government should expedite action on granting autonomy to Local Government Councils in Nigeria. Also, all Local Government Councils in Nigeria should take concrete steps to gain autonomy. This will limit the powers and control of the State Government over the Local Government Councils and stem the trend of illegal dissolution of elected Local Government Councils in Nigeria.

Finally, courts of law in Nigeria should grant speedy hearing of cases on dissolution of elected Local Government Councils and also order that status quo be maintained until the final determination of the cases. This is to prevent the State Governor from appointing caretaker committees claiming they are holding forth for the duration of the case. In addition to reinstating the elected Councils, courts of law should award substantial damages in favour of the aggrieved elected Council members for the loss and damage suffered as a result of their wrongful removal from office.