THE RULE OF LAW

AND LOCAL GOVERNMENT ADMINISTRATION IN NIGERIA

SAM UGWUOZOR, Ph.D

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Mekanand Publications
ENUGU/LAGOS/ABUJA

First Published August, 2020
By
Mekanand Publications
A division of Mekanand Ventures Limited
10, Amesi Street, Abakpa Nike, Enugu
Tel. 08036765444,

ISBN 978 - 3405 - 66- 7

DEDICATION

This work is dedicated to the good governance policy of the Governor of Enugu State, His Excellency, Rt. Hon Dr Ifeanyi Ugwuanyi characterized by the rule of law, accountability, transparency, accessibility, openess and respect for human rights and dignity and to the principles of common good.

ACKNOWLEDGMENT

This book is a product of several contributions, assistance and encouragement of a number of people.

I thank in a special way the Hon. Justice C. C. Nweze, Ph.D, J.S.C. whose one singular suggestion radically changed the structural content of the work.

A sincere note of thanks goes to my wife, Nnenna, my children and the entire members of Ugwuozor family, of which Rev. Fr. (Prof) Leonard Ilechukwu is undilutedly one.

I am highly indebted to the erudite Professor Sam Ugwu who painstakingly read through the manuscript and made useful suggestions and also wrote the Foreword No.1 of this work. In the same vein, the highly respected Administrator, Chief Chukwuemeka Isaac Nwatu wrote Foreword II of the work, I thank him immensely.

I was profoundly encouraged by my colleagues, Uwakwe Azikiwe, Dr. Barth, Obi, Anosike, Judith, Chinny, Achife, Abraham, Ify, Burundi, Peter, Mike, Chike, Tessy, Kenneth, Emma,Chimaroke (Jr) and Silas for the enabling, empowering, conducive and friendly atmosphere that fertilized my disposition to do this work.

I will always appreciate and acknowledge the warm support and encouragement of Professor Malachy Okwueze, the former Vice Chancellor of Coal City University, who is always there for me and Dr. Nicholas Asogwa (Aristotle) of the Department of Philosophy, University of Nigeria, for his wise counsel at all times.

I must particularly mention the invaluable role of Chukwudi Amah, Esq; McArb. who critically read the manuscript and made very useful suggestions.

I am immensely grateful to Mrs Mercy Ajibo, Mr. Eze Kenneth and Nneoma, for all their secretarial services which they offered always with unwavering commitment.

I regret that there are many other numerous invaluable contributors whose names may not be mentioned. I however, appreciate them all.

Sam Ugwuozor, Ph.D
August, 2020

PREFACE

Local Government occupies a position of very significant and prominent importance in the lives of the citizens. The need to bring Government closer to the people for more effective development underscores the philosophy behind the creation. It is created to provide services which are necessary in civilized life. It is also created to enable people participate more directly in the governance processes.

In Nigeria today, Local Government is regarded as the third tier of Government in the Nigerian federalism with clearly defined constitutional responsibilities as embodied in Schedule 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It is however, sad to note that Local Government is yet to meet the expectations of the people in the performance of its statutory and constitutional responsibilities.

The reasons for the ugly state of affairs have been attributed to a number of avoidable afflictions, including corruption, embezzlement of public funds, executive lawlessness, incompetence, lack of accountability and transparency, and undue regards to the rule of law.

The main kernel of this work is to point out, declare and emphasize that lawlessness and the lame, uncritical and unserious regard to the operations of the rule of law is

and remains the major and cardinal problem afflicting the administration of Local Government.

In any given polity, the rule of law remains the cornerstone of any governance. It implies that Government business is and must be conducted within the framework of rules and principles without resort to discretionary and arbitrary power. It advocates that the operators of the Local Government System including, the Chairmen, Supervisors, Councilors, Staff of Local Governments, etc cultivate and adopt reverential attitude and disposition to the provisions of the law, rules, and principles that were consciously, deliberately and purposefully created, to guide the administration of Local Government ranging from constitutional and statutory provisions, including the principles of morality for its efficiency, effectiveness and good governance.

Sam Ugwuozor Ph.D
August, 2020

FOREWORD 1

The problem of effective administration and structural management of the local government system, has become a thematic and daunting one. The issue of local government administration is cardinal and fundamental as it influences the shape most societies take in determining its national and federating units. Local government is so fundamental as it is directly and practically assigned the onerous task of providing for the socio-economic welfare of members of the community in various discussions as provided by the constitution and laws establishing it.

For decades now, there have been various literature, commentaries, guidelines etc, both local and international, on the issue of local government administration. Furthermore, there have been various approaches, reforms and strategies by both the military and civilians regimes to proffer solutions to the administration of the rural areas. Some of the texts and literature have addressed some major issues in the local government administration but not very comprehensive and embracing.

It is in this context, that this book: LOCAL GOVERNMENT ADMINISTRATION AND RULE OF LAW IN NIGERIA, comes handy to fill the yawning gap in literature. This is a major contribution to the solution to the gap between theory and practice in the local government

administration.

In an Eight well structured and coordinated Chapters, Dr. Sam. Ugwuozor, a prodigious writer, who has seen it all both in theory and practice, took the bull by the horn, to demystify local government administration and brought to the level of both practitioners and initiates.

In his Chapter One, the author, as a lawyer and local government administrator, exhaustively explains the concept of Rule of Law, its features and requirements. He also establishes relationships among Rule of Law, judiciary and the doctrine of separation of power.

In Chapter Two, the author deftly defines and explicates the concept of local government, exploring various definitions by different scholars and institutions. He discusses the evolution of local government and uses his practical experience to explain the 1976 Local Government Reforms and the violation of the Rule of Law in the local government system in Nigeria.

Chapter Three focuses on the structure of Local Government Administration in Enugu State. The author dissects the presidential and political structures of the local government and gives graphic details of the functions and responsibilities of the legislative council.

In Chapter Four, the author makes clear attempts to

explain the administrative structure of the local government and the principles guiding the employees of local government.

In Chapter Five and Six, the author discusses the financial administration, duties in the local government and the responsibilities of local government officials. Finally, he provides elaborate discussions on the nexus between local government and rural development with social emphasis on Enugu State.

Chapter Seven explains the relationship and rapport between accountability and the Law.

There is no doubt that Dr. Ugwuozor, has raised comprehensive vital issues in the local administration in Nigeria and provides practical solutions to them, which are rarely found in other works. Thus, the book is highly recommended to all administrators, local government officials, and other officials that have something to do with the local government system.

Prof. Sam C. Ugwu
Dept. of Political Science,
Enugu State University of Science
and Technology
ESUT, Enugu.

FOREWORD II

Local Government System in Nigeria is grassroot oriented. It showcased governance at local level which was not given impetus constitutionally in the scheme of things until 1976 Local Government Reforms. Before then, it had evolved under various forms, such as the Native Authority, Chief-in-Council, and Traditional Rulership etc until it metamorphosed into its being recognised as the third-tier of government. Local Governance had always been considered an inescapable bulwark of the political system and accepted by all as an important means of extending and encouraging political participation to millions of people and possibly bringing development at the very door-step of citizens.

When Sam Ugwuozor called me to put a Foreword to his new book on Local Government System, I knew that as an experienced scholar who had a glowing career in the Local Government System which was crowned by his appointment as a Permanent Secretary, that the book is one of the apt and well researched product that have come out of the deep archives of his vast knowledge.

The Eight Chapter book covered serious corners of the third-tier governance and administration. He brought in new and special Literatures in his discussions in Rule of Law in Local Government Administration and Local

Government and Rural Development which he anchored on our Local Environment, The Enugu State experience. His thoroughness and originality will strengthen our democratic foundation, good governance and administration in the Local Government System.

In the light of the foregoing, I strongly recommend the book to Local Government Workers, Students of Tertiary Institutions, Lecturers, Local Government Administrators and Every good people who are genuinely interested in improving the Lives of our people at their Localities by entrenching good governance in our Local Governments.

Chukwuemeka Isaac Nwatu
Chairman Enugu State Local Government Service Commission
and
National Chairman, Association of Chairmen of Local Government Service Commissions in Nigeria
May, 2020

TABLE OF CASES

TABLE OF ABBREVIATIONS

CA	-	Court of Appeal
FRN	-	Federal Republic of Nigeria
ICJ	-	International Commission of Jurist
JAC	-	Justice of the Appeal Court
JSC	-	Justice of the Supreme Court
JSMC	-	Junior Staff Management Committee
LPELR	-	Law Pavilion Electronic Law Report
NWLR	-	Nigerian Weekly Law Report
SC	-	Supreme Court
USSC	-	United States Supreme Court
VEC	-	Visit Every Community

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CHAPTER ONE
THE RULE OF LAW

The rule of law is a constitutional concept which holds that everything must be done according to the law. It also upholds the principles of equality of all before the law and the independence and autonomy of the judiciary.

However, the rule of law like every other philosophical concept is yet to acquire a "settled meaning". Aristotle, for instance, described law as "the pure voice of God and reason" and "reason free from passion". He postulated that the law should rule and unequivocally stated his conviction thus:

> *He who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man to rule adds an element of the beast, for desire is a wild beast, and passion perverts the mind of rulers, even when they are the best of men. The law is reason unaffected by desire.*

Aristotle maintained that Rulers must be "the servants of the laws" because "law is order, and good law is good order". In other words, Aristotle is an advocate of the rule of law and of the State of being governed by law and not by human beings; a government of laws

(https://www.crf-usa.org,)

AV Dicey, (1939:108-202) is the foremost modern proponent of the rule of law. Dicey identified the rule of law as the bedrock of British constitutionality and has three distinct meanings. The first is "the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government". Under this first principle no person can be made to suffer any penalty, or deprived of his or her rights and privileges on the exercise of any form of discretion that does not follow the due process of law. Only the law as the overlord determines the actions of both the ruler and the ruled in the State.

The second meaning of the rule of law is that "no man is above the law… and everyman whatever be his rank or condition is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunes". This implies that those who hold political power also feel bound by the law.

The third character of the rule of law according to Dicey is that every person is entitled to certain liberties like the right to personal liberty. The idea of human rights can be discerned from this third stanza of the rule of law

implying that rule of law has respects for human rights as these rights make human beings human.

Although a number of criticisms have been raised against Dicey's concept of the rule of law which may for lack of space would not be included here.

The United Nations in its contributions to the meaning of the concept of the rule of law established very strong relationship or connection between the rule of law and development.

For the United Nations (2020)

> *the rule of law is a principle of governance in which all persons, institutions and entities, public, private, including the state itself are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with International human rights norms and standards.*
>
> *It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to*

> *the law, fairness in the application of the law, separation of powers, participation in decision making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.*

United Nations further stated that:

> *the rule of law is fundamental to international peace and security, and political stability; to achieve economic and social progress and development and to protect people's right and fundamental freedoms.*

The rule of law, the United Nations again postulated:

> *is fundamental to people's access to public services, curbing corruption, restraining the abuse of power and to establish the social contact between the people and the State.*

The International Commission of Jurists (ICJ) (1959) in New Delhi formulated two ideas that should explain the concept of the rule of law. For the ICJ, it must not be about law qua law but about incorporating in the law certain qualities or principles that could enhance human dignity which is that:

(i) all power in the state should be derived from and exercised in accordance with the law; and

(ii) the law itself must be based upon respect for the supreme value of human personality; human personality carries in its human rights.

Embedded in the two principles are ideas which require that the rule of law should protect, safeguard and advance civil, political and social rights of the individuals in a free society for the realisation of their human dignity.

Consequently, from the ideas of the ICJ the following requirements of the rule of law were deduced by Nicholas Cowdery (1999: 56): They are that;

(i) there must be law prohibiting and protecting against private violence and coercion, general lawlessness and anarchy.

(ii) the government must be bound (as far as possible) by the same laws that bind the individual

(iii) the law must possess characteristics of certainty, generality and equality. Certainty requires that the law be prospective, open, clear and

relatively stable. Laws must be general application to all subjects and apply equally to all.

(iv) the law must be … reasonable in accordance with informed public opinion and general social values and there must be some mechanism (formal and informal) for ensuring this.

(v) there must be institution and procedures that are capable of speedily enforcing the law.

(vi) there must be effective procedures and institutions to ensure that government action is also in accordance with the law.

(vii) there must be an independent judiciary so that it may be relied upon to apply the law.

(viii) a system of legal representation is required, preferably by an ongoing and independent legal profession.

(ix) the principles of "natural justice" (or procedural fairness) must be observed in all hearings.

(x) the court must be accessible (without long delay and high costs).

enforcement of the law must be

impartial and honest.

(xi) there must be an enlightened public opinion – a public spirit or attitude favouring the application of the foregoing propositions.

These features in the opinion of the ICJ would guarantee the protection and enforcement of human rights.

What must be noted is that the ideas about the rule of law have been central to political and legal thoughts and simply stated, it is a process, practices or norms that "support the equality of all citizens before the law, secures a non-arbitrary form of government and more generally prevents the arbitrary use of power" Naomi Choi (googleleweblight.com)

The rule of law is opposed to the "rule of men". In the 'rule of men' the law whether written or otherwise is meaningless as it can be broken, especially by powerful people with impunity and the new law becomes their words and prescriptions.

The rule of law is however not about government alone. Both the government and the governed are expected to respect and comply with the rule of law in the interest of the overall well-being of the State.

The principle of rule of law has today formed the

bedrock of modern Constitutions and constitutionalism. Section 1 (1) (2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), for instance, upholds the principles of the Rule of law. The Constitution is supreme and binds all persons, authorities and governments in Nigeria. It is designed to control and regulate the power and functions of government, control the rights and obligations of the citizens.

1.1 THE RULE OF LAW AND DEMOCRACY

The doctrine of rule of law is intimately interwoven with democracy. It is indeed a pillar of constitutional democracy and inter-woven with it. Abraham Lincoln, (1809 – 1865) the 16th President of the United States, defined democracy as: "the government of the people by the people and for the people". Democracy guarantees a litany of rights such as the right to life, right to freedom of thought, right to freedom of human person, right to private life, right to fair hearing, right to freedom of religion, right to freedom of expression. Citizens can only enjoy these rights where the law is supreme. Although democracy provides the environment for civil rights to thrive in the words of Sagay, (1996:3) "there can be no democracy without the rule of law".

1.2 THE RULE OF LAW AND GOOD GOVERNANCE

The World Bank (1991) in Nkwede (2014: No 4) views governance as "the manner in which power is exercised in the management of a country's economic and social resources for development". Simply put accountability, transparency and the rule of law constituted the brain box of good governance.

Anuye, Steve, Akombo, et al (2017: No 4) gave an elaborate description of the concept of good governance. According to them,

> *"good governance invites enthronement of a democratic government which guarantees equal participation of all citizens in governance; provision, promotion and sustenance of the rule of law; provision and protection of the fundamental human right of the citizens…" Other attributes of good governance, according to the authors include, "availability of a transparent, accountable and participatory governance at all levels of government; regular and free-and fair elections; as well as provision of basic amenities, such as potable water, electricity,*

> *qualitative education, health care delivery, good roads among others".*

Good governance would secure a strong, stable, workable and effective democracy where democratic institutions are strengthened for service delivery and the competence and capacity to meet the citizen's legitimate needs and expectations and earn their trust and confidence.

1.3 THE RULE OF LAW AND THE SEPARATION OF POWERS

The concept of the rule of law cannot be exhaustively discussed without mentioning the issue of separation of powers. The principle of separation of powers states that in order to avoid tyranny, arbitrariness and abuse of power on the part of those who govern, the arms of governance must be separated from one another both in the composition of the personnel and their functions. The arms of government are the Legislature, the Executive and the Judiciary. The doctrine of separation of power was given prominence in the political theory of John Locke, (1690: 2,4) cited in David Jenkins (2011) 56: Mcqill LJ543 who cautioned against combining or merging both legislative and executive powers in the same body.

This doctrine was further developed by Charles Lious

Montesquieu in his work the spirit of the law. According to him, as explained by K.K Ghai (your articlelibrary.com) when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehension may arise lest the same monarch enact, tyrannical laws, to execute them in a tyrannical manner. In accordance with this principle, the three arms of government; the legislature, executive and judiciary are expected to operate a system of mutual checks and balance one against the other. The doctrine of separation power is a cardinal pillar of Nigeria's constitutionalism. The theory is reflected in sections 4, 5 and 6 of the Constitution of the Federal Republic of Nigeria 1999, (as amended). The Constitution in these sections separated the three arms of government with distinct personnel and functions but at the same time provides a system of interdependence for their checks and balances against one another.

The theory of separation of powers, however does not seek to separate governments into water-tight compartments. Total separation of powers is logically impossible. It is not practicable as it has never worked out in any sphere of human activity. The organs of government enjoy shared competence. Even though the powers are shared in practice the dispersed powers still dovetail into a workable principle of

interdependence and reciprocity. Omoruyi (1991:8) explained this phenomena when he said:

> *Government is a web of interlocking relationships. The legislature, in other words, cannot function in isolation. This also applies to the executive. Herein lies the problem of legislative executive relationship in a presidential governmental arrangement, in between the autonomy conferred on each arm of government in virtue of the principles of separation of powers and the imperative of cooperation given the logic of government as an interactive process.*

As no governmental organ is completely independent and isolated then, the principle of checks and balances has become a constitutional imperative. According to Nwabueze, (1982:32)

> *Checks and balances is a concept in the relationship between the executive and the legislature whereby the political organs with a view to the balancing of powers are enabled to check one another in the*

exercise of their respective functions.

Nwabueze had also in Olusegun Yerokun (2016:1054), observed that:

> *concentration of government powers in the hands of one individual is a definition of dictatorship and absolute power by its nature is arbitrary, capricious and despotic*

1.4 THE RULE OF LAW AND THE JUDICIARY

While the rule of law expresses the principle that all people are equal under the law and that no one is above the law, the role of judges is to protect the rights and freedom of citizens. The rule of law, therefore, includes respect for the decisions of the court, that is, the orders, decision and processes of the court. This is because in the words of Dr. Nnamdi Azikiwe, (1965: 345) "the judiciary is the bulwark of the liberty of the citizens".

In *Nigerian Army vs Mowarin, [1992] NWLR (Pt 235) 345.*

In this case the respondent has been discharged in a criminal proceedings, but inspite of her discharge by a High Court was still detained. She sought to declare her detention unconstitutional, unlawful, illegal, null and void and to be released from the detention. Her application was allowed. The appellants appealed to the

Court of Appeal and simultaneously filed an application at the High Court seeking a stay of execution of the judgment pending determination of their appeal.In fragrant disobedience of the Order of the High Court, the appellant still held the respondent in detention.
The Court of Appeal dismissed the appeal and stated as per Ubaezonu JCA that:

> *An order of court must be obeyed even if such an order is perverse, until such a time that the order is set aside by competent court … a flagrant flouting of an order. …a flagrant flouting of an order of the court by the executive is an invitation to anarchy…*

Again the Supreme Court in the case of Governor of Lagos State v Ojukwu (1986),1NWLR621 gravely expressed its displeasure, upon the idea of disobeying or flouting the order of decision of courts.

The Court of Appeal had ruled against the Government of Lagos State and Commissioner of Police, Lagos State Command and had granted an Order of Mandatory Injunction in favour of the applicant, Chief Odumegwu Ojukwu, restoring him to his residence at No 29, Queens Drive, Ikoyi, Lagos and restraining the respondents and all their officers, servants, agents and functionaries from ejecting or taking any steps to evict the applicant from his residence at No 29 Queens Drive, Ikoyi, Lagos.

The court of Appeal had earlier on granted an exparte application on interim Injunction to stop the ejection of Chief Ojukwu pending the determination of substantive motion on notice. While the case was still pending in the High Court, the Lagos State Government, without an order of court, forcibly ejected Chief Ojukwu from the property; without carrying out the Order of the Court of Appeal to restore Chief Ojukwu into the house, the Lagos State Government and the Commissioner of Police, Lagos State Command appealed to the Supreme Court against the Order of the Court of Appeal and sought by a motion, an order of the Supreme Court staying the execution of the decision of the court of Appeal pending the determination of the appeal in the Supreme Court.

The Supreme Court held as per Oputa that:

(i) It is a serious matter for anyone to flout a positive order of a Court and proceed to insult the Court further by seeking a remedy in a higher Court while still in contempt of the lower Court.

(ii) It is more serious contempt when the act of flouting the order of the Court is by the executive.

(iii) once the Court is seized of a matter, no party has a right to take the law into his own hands

(iv) to use force to effect an act and while under the marshal of that force, seek the Courts equity is an attempt to infuse timidity into Court and operate a sabotage of the cherished rule of law.

(v) the government should be conducted within the framework of recognized rules and principles which restrict discretionary power.

(vi) that dispute as to the legality of acts of government are to be decided by judges who are wholly independent of the executive.

(vii) the judiciary cannot shirk its sacred responsibility to the nation to maintain the rule of law. It is both in the interest of the government and all in Nigeria.

Obaseki JSC while delivering a concurrent Judgment on the matter explained the import of the Rule of Law. He said:

> *In the area where rule of law operates, the rule of self help by force is abandoned. Nigeria being one of the countries in the world*

> *even in the third world which proclaim loudly to follow the rule of Law, there is no room for the rule of self help by force to operate. Once a dispute has arisen between a person and the government or authority and the dispute has been brought before the court, thereby invoking the judicial powers of the State, it is the duty of the government to allow the law to take its course or allow the legal and judicial process to run its full course. The action the Lagos State Government took can have no other interpretation than the show of the Intention to pre-empt the decision of the court. The court expects the utmost respect of the law from the government itself which rules by the law.*

According to the learned Justice, the Nigerian Constitution is founded on the rule of law

> *the primary function of which is that everything must be done according to law... and that government should be conducted within the framework of*

> *recognised rules and principles which restrict discretionary powers which could colourfully be spoken as golden and straight wand of law as opposed to the uncertain and crooked cord of discretion*

In his own judgment, Oputa JSC asserted that the rule of law presupposes:

i) That the State including the Lagos State Government is subject to the law.

ii) That the judiciary is a necessary agency of the Rule of Law.

iii) that government(including the Lagos State Government) should respect the right of individual citizens under the rule of law.

(iv) That the Judiciary is assigned both by the Rule of Law and our Constitution the determination of "all actions and proceedings relating to matters in dispute between persons or between government or an authority and any person in Nigeria..."

1.4.1 Judicial Review

The courts have the power to review the decisions and actions of other organs of government. Therefore although the local government law 2004 did not specifically create any court as an arm of local

government there are already functional courts, which can act as check against abuses or the excesses of the executive and legislative arms of the local governments. They are the customary courts, magistrate court, State High Court, Federal High Courts etc. These Courts are creation of the 1999 Constitution. The 1999 Constitution (as amended) is supreme and its provisions have binding force on all authorities and persons throughout Nigeria and where any law is inconsistent with the provisions of the constitution the constitution prevails and that other law shall to the extent of the inconsistency be void.

It is the function of the court established under section 6 of the constitution to guard against breaches of the provision of the constitution and other laws. The courts reviews the activities of the other arms of government and determines whether their actions are in consonance with the constitution or any other law. If they are not the court would declare such actions null and void and of no effect. The power of the court to do so is called judicial review. According to Nwabueze; (1977:229)

> *Judicial review is the power of the court in appropriate proceedings before it to declare a governmental measure either contrary to or in accordance with*

> *the constitution or other governing law, with the effect of rendering th measure invalid or void or vindicating its validity.*

The supreme importance of this doctrine of judicial review was established by the U.S Supreme Court in the case of *Marbury V Madison* 5USCLCR)187[1803]. The case established that the actions of the executives, which are violative of legal obligations, can be Judicially corrected. In this case the court said:

> *certainly all those who have framed written constitution contemplate them as forming the fundamental paramount law of the nation and consequently the theory of every such government must be that an act of the legislature repugnant to the constitution is void.*

In *Abdulkarim V Incar (Nig) Ltd.* [1992] 7NWLR1, the Supreme Court pronounced per Nnaemeka-Agu SJC on what Judicial Review entails; thus:

> *In Nigeria, which has a written Presidential Constitution, Judicial review entails three different processes, namely: the courts; particularly the Supreme Court, ensuring that every arm of government plays its role in the*

> *true spirit of the principles of separation of powers as provided for in the constitution; that every public functionary performs his functions according to law, including the constitution, and for the Supreme Court that it reviews court decisions including its own when the need arises in order to ensure that the country does not suffer the regime of obsolete or wrong decisions.*

In summary, the Rule of law is all about supremacy of the law, equality before the law, respect for human rights, transparency of official transactions, avoidance of corruption, accountability and responsiveness to the people's needs and expectations. At the end, we must adhere to the counsel of the great philosopher; Plato, who in last book summarises his position on the rule of law. According to him

> *where the law is subject to some other authority and has none of its own, the collapse of the State, in my view is not far off, but if law is the master of the government and the government is its slave, then the situation is full of promise and*

men enjoy all the blessings that the gods shower on the a State.

CHAPTER TWO

THE CONCEPT OF LOCAL GOVERNMENT

Definitions

There is no universally accepted definition of the term Local Government. Several scholars of different persuasions have defined the term in different ways.

Professors Odenigwe, [1979.99]an erudite scholar in that field defined local government as:

> *a system of local administration under which local communities and towns are organised to maintain law and order, provide some limited range of social services and public amenities and encourage the co-operation and participation of the inhabitants in joint endeavours towards the improvement of their living. It provides the community with formal organisational framework which enables them to conduct their affairs effectively and regulate the actions of their members for the general public.*

A. O. Ikelegbe did not only define the concept of local

government, he provided an elaborate explanation of the goals of local government. According to him:

> *The goals are the facilitation of democratic self-governance at the local level through local representatives, the mobilization and management of local resources through local involvement and encouragement, the planning and provision of services and development activities, based on local needs, enhance stability and decentralize government activities and services closest to the people, and the integration of local communities into the Federal scheme (state and federal governments) through vital communications, mobilization and inputs to governance.*

An eminent scholar, John Clarke, (1960: 1) defined local government as that part of the local government of a nation which deals mainly with such matters as concern the inhabitants of a particular district or place and which it is thought desirable should be administered by local authority subordinate to the central

government.

For D. Lockard, Encyclopaedia, local government may be loosely defined as a public organisation, authorised to decide and administer a limited range of public policies within relatively small territory which is a sub division of a regional or national government.

For V. Vankata Rao, (1965: 1) states that; local government is that part of the government which deals with local affairs, administered by authorities subordinate to the state government but elected independently of the state authority by the qualified residents.

Emezi (1984) cited by Samuel Ugwu (2017: 11) defines local government as a system of local administration under local communities that are organised to maintain law and order, provide some limited range of social amenities, encourage cooperation and participation of inhabitants towards the improvement of their conditions of living. It provides the communities with organisational framework, which enables them to conduct their local affairs effectively for the general good.

Local government for the United Nations is:

> *…a political sub-division of a nation (or in federal system or*

> *State), which is constituted by law and has substantial control of local affairs including the power to impose taxes, or exert labour for prescribed purposes. The governing body of such an entity is elected or otherwise locally selected (1961: 11).*

Although there are as many definition of the term local government as there are many scholars, Sam Ugwu (2017) had identified the definition in the guidelines for a Reform of Local Government in Nigeria as "more encompassing… and one that captures the relevant indices of local government…"

According to the guidelines (1976), a local government is:

> *Government at the local level exercised through representative council established by law to exercise specific power within definite areas. These powers should give the council's substantive control over local affairs; as well as the staff and institutional and financial powers to initiate and direct the provision of*

services, to determine and implement projects, so as to complement activities of the State and Federal governments in their areas, and

to ensure, through active participation of the people and their traditional institutions, that local initiatives and responses to local needs are maximised

The definitions of the term local government although may have been made in different ways but each of the definitions contains the following attributes or characteristics:

(i) It is a sub-system playing its part with the large national political system (Oni, 1984 : 18)

(ii) It is the lowest level of government.

(iii) It is usually elected/selected and representative.

(iv) It is established by law and has certain responsibilities.

(v) It includes a population / living within the confines of a defined territory, and

(vi) It is a legal entity of its own, and so can sue or be sued (Agi, 2002:109

and Ola, 1988:59).

Distinctive attributes and characteristics of local authorities was identified and recognised and laid down by the Supreme Court of India in *Union of India V RC Juin* (AIR 1981: SC 951). These are:

(i) The authority must have separate legal existence as corporate bodies.

(ii) It must function in a defined area and must ordinarily, wholly or partly, directly or indirectly be elected by the inhabitants of the area.

(iii) It must enjoy a certain degree of authority, with freedom to decide for itself, question of policy affecting the area administered by it.

(iv) It must be entrusted by a statute with such governmental functions and duties as are usually entrusted to municipal bodies.

(v) It must have the power to raise funds for furtherance of the activities and fulfilment of its projects by levying taxes, rules, charges and fees.

(vi) Fundamental rights are available against the local bodies and can be enforced through court of law.

2.1 HISTORY AND EVOLUTION OF LOCAL GOVERNMENT IN NIGERIA

Local administration was in existence in Nigeria before the introduction of colonial rule. Pre-colonial Societies in Nigeria had their own system of local administration. There were empires, kingdoms, and the village leadership. The Emirs in the Northern Region, the Obas and his Council in the Western Region exercised absolute authority over their people. In the Igbo Society with the republican and egalitarian practice the exercise of authority was diffused.

However, the British imposed their colonial administration on the people of Nigeria, at the beginning of the 19th century, precisely in 1903 by Lord Lugard. It was a system of indirect rule in which the pre-colonial political structures were used in the governance of the people.

The system of indirect rule according to Ugwu, (2000: 8) later degenerated into direct rule because

> *the traditional rulers became mere Local agents of colonial officers. The Emirs in the North, the Obas in the West and the Warrant Chiefs in*

the East became Sole native authorities in their domains

Adeyemi (2019, Vol.9, No 2) distinguished three types of native authorities during the indirect rule system: The Chief-in-Council and the Chief and Council

(i) The Chief: The Chief was a sole administrators and was responsible only to the Resident of the province. This was common in the Emirate North.

(ii) The Chief in Council: The Chief has a council but he is at liberty to accept or reject the advice of the members of his council.

(iii) The Chief and Council: The Chief and members of the council share together the power of decision making authority in the area of making of appointments, disbursement of funds and land matters

By the late 1940s Adeyemi (2019) further observed, the native authority system of Local administration in Nigeria had started losing national appeal. This is because "educated Nigerians had started agitating for a

more participatory system of local administration."
On the authority of the Eastern Region local government ordinance of 1950, the Western Region local government law of 1952 and the 1954, Native Authority Law in Northern Nigeria, elected local government council based on the British model emerged. The primary function of a Native Authority under the ordinance was the maintenance of law and order as the focus of the colonial government was on law and order in order to maintain their authority that was an imposition on the colonised people. The Native Authorities were subject to the directives of the Colonial Administrative Officer.

It is enough to say that up till the Local government reform of 1976 local governments in all the States of the Federation were very ineffective and ineffectual in the provision of essential services. In the first place "there had been a divorce between the people and the government institutions at their most basic levels". According to Omorogiuwa, (1993) the local government suffered inadequate fund, poor staffing, excessive politicking, State government deliberate encroachment on functions of Local Government and these inhibited their effectiveness as agents of national integration and grassroot development. Beside, local government lacked national uniformity and were known by different names in different states. In the then East Central State,

for instance, a new pattern of administration, known as "Development Administration" system was adopted in 1971, under the Divisional Administration Edict 1971. It was a two tier structure of Divisional and community councils with a Divisional Officer (D.O). These problems were addressed by the local government reforms of 1976.

2.2 THE 1976 LOCAL GOVERNMENT REFORMS

One of the legacies which the military government bequeathed to the people of this country in 1976 was a refined, restructured and reformed local government system whose orientation is democratic, participative and developmental. According to Oyelakin[1994 vol. No1] the aim of the reform is to:

> *institutionalize a culture of participatory democracy, cooperative federalism and even development in Nigeria, using the local government which is nearest to the people as a catalyst*

Earlier while launching the reform on Thursday August 1976, the then Chief of Army Staff, Supreme Headquarters, Brigadier Shehu Musa Yaradua said:

> *These reforms are primarily conceived as a bold and far-reaching attempt at economic and*

political restructuring. Their fundamental aim is to permeate all levels of our society in such a manner as to make the idea and practice of government more meaningful and purposeful to the large majority of our population. The commitment of the federal military government to the reforms developed from certain basic beliefs. The federal military government believes that through the reforms a fundamental and salutary change would be brought about in the lives of all citizens of this country. The time is particularly over due for the under privileged people in this country to benefit directly from our social and economic development. If stability at the national level is to be guaranteed, a firm foundation for a rational government at local level is imperative...The crux of these reforms is that henceforth, a new tier of government primarily devoted to development at the local level will be established.

What the reform did was to establish the local government as a third tier of government to govern at the local level, and this was the beginning of a modern system of local government in Nigeria. Ever since then, local government had received constitutional backings including the 1979, 1988 and the 1999 Constitutions, and its functions and goals has been:

- *To promote participatory democracy at the grass root.*
- *To mobilize local reserves for rapid socio-economic development*
- *To provide certain basic amenities and services at the grassroot.*
- *To encourage initiative and leadership potential in managing local affairs.*

The reform was initiated and coordinated by the federal government and from an extensive consultation regarding the best system of local government suitable to Nigeria, different committees consulted at different centres like Enugu, Ibadan and Kaduna and a subsequent national conference at Ibadan where the recommendations of the various committees were discussed. From the national consultations carried out at the various levels, the government produced a document that spelt out the reform philosophy – the guidelines for Local Government Reform.

The main features of the 1976 local government reforms are:

(i) Formally recognised local government as a distinct level of government and set out to establish local government as third-tier of government in Nigeria. This means that local government had to have a definite role defined for them by law that was respected by higher tiers of government.

(ii) Established a uniform national system of local government administration, all local governments in the country had a common structure, source of revenue and personnel.

(iii) Each local government council was the local authority for its area and, at least, seventy-five percent of its members were elected, while the rest were made of nominated members. The new system of government was democratic.

(iv) The Councillors elected their Chairman subject to the approval of the state Governor.

(iv) Supervisory Councillors were elected

from among the councillors who served as the political heads of Departments of the local government. Together with the Chairman and at least two elected members, they formed the finance and general purposes committee of the Local Government – the coordinating committee or cabinet of the local government council.

(v) The local government Secretary was designated the Chief Executive Officer of the local government.

(vi) The establishment of a Local Government Service Board whose main duty is to recruit qualified senior staff for the local government and to deploy them appropriately, promote and protect them against arbitrary termination of appointment.

(vii) The funding of the local government with a statutory percentage of share of the federation account and state revenue.

(viii) The harmonisation of the condition

of service of local government personnel with the personnel of the state and federal governments.

(ix) Establishment of one percent (1%) training fund for the training and retraining of local government staff.

(x) All the main features of the local government were incorporated into the 1979 Constitution.

Section 7 reads jointly with section 8 provides that there shall be:

> T*he system of local government by democratically elected councils which is by this Constitution guaranteed and accordingly the government of every state shall subject to section 8 of this constitutions… ensure their existence under a law which provides for the establishment, structure, composition, finance and functions*

To show that the local government is a distinct level of government as stipulated in the reform, section 7(5) of the 1979 Constitution and the same section under the 1999 constitution as (amended) conferred on the local governments stipulated functions. Section 149(4)(5)(6) and (7) of the 1999 constitution provided for local governments, secured sources of finance which was also accommodated in section 162 subsection

(3)(4)(5)(6)(7) and (8) of the 1999 constitution of the Federal Republic of Nigeria (as amended).

Between 1979-1983, many of the features of the 1976 reform were violated and grossly abused which are clear cases of violation of the rule of law.

Because of these violations, the federal government appointed a 20-man committee to review the system of local government administration after terminating the civilian administration of the Second Republic. The committee was headed by Alhaji Ibrahim Dasuki who affirmed in his report the soundness of the 1976 reform and attributed ''whatever problems there arose from the attitudes and behaviours of the system.''

In 1988, the Federal Military Government announced the abolition of the state's ministries of local government and replaced by a Department of Local Government in the governor's offices. The Civil Service Reform was extended to local government in the same year and the local government administration was restructured into six departments of coordinate systems. They include, personnel management, finance and supplies, works, Agriculture, Education. The reform designated the chairman as the chief executive and accounting officer. In June 1991, the local government (Basic Constitutional and Transitional Provisions)

(Amendment) (No 23) Decree extended the presidential system to Local Government Administration. The local government was granted full powers to approve local budget and to pass by-laws.The history and evolution of local government ought to have continued up till the 1999 Constitution or other reforms thereafter, instead of stopping same in 1991.

2.3 THE LOCAL GOVERNMENT AS A FEDERATING UNIT

The distinctive feature of a federation is the formal division of governmental power by a constitution between its constituent units. Consequently the constituent units have power to make laws on the subjects allotted to them by the constitution. The 1979 Constitution and other constitutions that came after it including the 1999 constitution (as amended) created and allotted areas of legislative competence to local governments. The constitutional functions of the local governments are today prescribed in the fourth schedule of the Federal Republic of Nigeria, 1999 Constitution (as amended). These constitutional responsibilities are replicated in the local government law.... They are as follows:

(a) the consideration and the making of recommendations to the State Economic Planning Commission 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) proposal made by the said Commission or body;

(b) collection of rates and issuance of radio and televison 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) construction, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;

(f) establishment, maintenance of roads, streets, street lightings, drains, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by law.

(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 under this law or as may be prescribed by

the House of Assembly of the State;

(k) control and regulation of-

(i) out-door advertising and hoarding,

(ii) movement and keeping of pets of all descriptions,

(iii) shops and kiosks

(iv) restaurants bakeries and othe replaces for the sale of food to the public,

(v) laundries; and

(l) licensing, regulation and control of the sale of liquor.

In Emmanuel Adebanjo Osibona V Ikenne Local Government and Anor (2016) LPELR - 41130(CA)

The dispute before the High Court was over the renaming of a Street.

A street called Gbadebo Egurege Street in Ikenne, Ogun State was renamed Opeolu Okusanya Ematuwo Street. Emmanuel Adebanjo Osibona was not happy with the renaming and he took an action on behalf of himself and the Gilbert Gbadebo Osibona family against ikenne Local Government and Alhaji Opeolu Okusanya Ematuwo who he sued as 1st and 2nd Defendants respectively.

On appeal to the Court of Appeal, the court held as per, Nonyerem Okoronkwo J.C.A. that "... the naming of roads, street and numbering of houses is one of the

functions of a Local Government Council as provided in paragraph or article 1(g) of the Fourth Schedule to the Constitution of the Federal Republic of Nigeria (1999) as (amended)..."

Again, in *Bamidele V Commissioner for Local Government and Community Development* [1994]2NWLR 568 the Plaintiff/Appellants claimed against the defendants/Respondents in the High Court of Lagos State as follows:

(i) A declaration that it is incompetent of the defendants and contrary to the constitution of the Federal Republic of Nigeria to establish, inclination and regulate markets, particularly to interfere with the day to day running of Alayabiagba market situate and lying within the area of authority of Lagos Island local Government or enjoyment by plaintiffs of the said market.

(ii) An injunction restraining the defendant, their servants, and/or from agents establishing, maintaining and regulating markets, and particularly interfering with the day to day running of the Alayabiagba market...

It was the contention of the appellants that the power to run, manage and control, maintain and regulate the market is in the Lagos Island Local Government and not

the Lagos State government. At the end of the trial, the trial Judge dismissed the appellants claim.

The Appellant appealed against the judgment of the learned trial judge. The Court of Appeal allowed the appeal and held among others that:

> *if a public body, such as the Local Government in this case, is entrusted with certain powers by statute, it has a duty to perform it either directly or by lawful delegation. It cannot be deprived of it nor can it surrender it in this case, the evidence shows that the Lagos State Government unlawfully took over the responsibility of the Lagos Island Local Government over the Alayabiagba Market and raised the stallage fee from N12 per year to N480 despite the fact that there was no lawful delegation of its power by the said Local Government to the State Government. This was a usurpation of the functions of the local government, by the State government and an infringement of the Fourth Schedule to the 1979*

> *Constitution and as such it is indefensible and unlawful.*

The Court of Appeal harped on the need for governments to adhere to the Separation of powers under the constitution. In the words His Lordship Uwaifo, JCA on the matter:

> *In a democratic society governed by a democratically elected government under the constitution this illegality, no matter its salutory intention, should not be permitted. Once a situation like that is allowed to go unchallenged by whoever is affected, more serious infractions will soon be committed.*
>
> *In due course, the constitution is rendered irrelevant, that means a slide, into authoritarianism. All these can come about just because the Law and the Constitution were not observed and the non-observance was connived at or acquiesced in and the court in a competent action did nothing about it. That does not augur well for democracy and the rule of law. It weakens their*

framework and their practice.

Section 52 of the Local Government Law 2004 also stipulated the functions of a Local Government to include participation of such Local Government in the government of the State in the following matters, namely:-

(a) the provision and maintenance of primary, adult and vocational education;

(b) the development of agriculture and natural resources, other than the exploitation of minerals;

(c) the provision and maintenance of health services;

(d) the maintenance of order and good government within the area of its authority; and

(e) such other functions as may be conferred upon a Local Government by the House of Assembly of the State.

In *Akinbiyi V Lagos Local Government Council and Others* (2012) LPELR-19839 this statutory function of the Local government received the judicial validation of the Court of Appeal, as per Ibrahim Mohammed Musa Saulawa, JCA.

The court held that in accordance with the fourth schedule to the constitution, the main functions of the first Respondent, nay any other local government for

that matter, shall include:

a) The 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 the State are affected

b) Collection of rates, radio and television licences..."Thus as rightly held by the court below, the Respondents, where by law constitutionally empowered to collect rates and regulate outdoor advertising".

By Section 54 of the Enugu State Local Government Law 2004, and subject to the provisions of the Local Government Law or any other Law or enactment, every local government shall have power to engage in any form of trade, commerce or industry.

Again, by Section 55 of the enugu State Local Government Law 2004 and subject to the Local Government Law, every local government shall be responsible for and have power to make bye-laws for all or any of the following matters, that is:-

(a) health centres, maternity centres, dispensaries and health clinics, ambulance services, leprosy clinics and preventive health services;

(b) meat inspection and abattoirs
(c) nursery, primary and adult education;
(d) information and public enlightment;
(e) provision of scholarships and bursaries:
(f) provision of public libraries and reading rooms;
(g) agriculture and animal health extension services and veterinary clinics;
(h) rural and semi-urban water supply;
(I) fire services;
(j) provision of roads(other than trunk roads) their lighting and drainage;
(k) support for arts and culture;
(l) control of pollution;
(m) control of beggars, or prostitution and repatriation of destitutes;
(n) provision of homes for destitutes, the infirm and orphans;
(o) provision of public utilities including roads and water transport;
(p) public housing programmes:
(q) regulation and control of buildins;
(r) town and country planning
(s) operation of commercial undertakings;
(t) control of traffic and parking;
(u) pipe sewerage system;
(v) rural electrification.

2.4 CASES OF VIOLATIONS OF THE RULE OF LAW

Alhaji Dasuki in his Nationwide Report of 1985 identified operational problems (council's functionaries) as main factors responsible for the problems of local government system in Nigeria and their failure to implement the 1976 local government reforms. The operators were the chairmen, elected and nominated councillors and the state government officials who have supervisory roles over the local government''.

At Chapter One of this work, the theory of rule of law was extensively discussed and we identified the antithesis of the rule law with arbitrariness and the rule of man. It is obvious that the collapse of the 1976 local government reform and non-realisation of its objectives was due to lack of regards to rules guiding local government operations. Such violations of the rule of law are legion. (1) One of such violations that had received the rebuke of the courts is the tendency of State governments suspending elected local governments and their replacement with a Caretaker Committee. The Supreme Court frowned at this in the case of Governor of Ekiti State and others V. Olubunmo and others. In this case:

CASE 1:
GOVERNOR EKITI STATE & ORS V. OLUBUNMI & ORS

(2016) LPELR-48040(SC)

FACTS: The Plaintiffs/Respondents were elected into the Local Government Councils in Ekiti State for a-3 year tenure, that is, from 20th Dec. 2008 to 19th Dec. 2011.
On 29 October 2010, Defendants/ Appellants, pursuant to Section 23B of the Ekiti State Local Government Administration (Amendments) Law, 2001. ("the Law") purportedly dissolved all the sixteen democratically-elected Local Government Councils in the State and appointed un-elected caretaker committees in their place.

The Plaintiffs/Respondents challenged the purported dissolution at the trial Court. They asserted that, having been democratically-elected to serve for 3 years, the dissolution of their councils by the Defendant/ Appellant is unconstitutional, null and void.

The trial Court declined jurisdiction to entertain the matter. The Plaintiffs/Respondents appealed the trial court's decision to the Court of Appeal. Upon considering the Plaintiffs/Respondents' claim, the Court of Appeal granted the reliefs sought. The Defendants/Appellants have appealed to the Supreme Court, and sought for determination of this issue.

ISSUE

Whether the provisions of **Sections 23B (i) and (ii) of the**

Ekiti State Local Government Administration (Amendment) Law, 2001 are inconsistent with Section 7(I) of the Constitution of the FRN, 1999 (as Amended)?

Put differently, whether the Defendants/Appellants have the power to dissolve the democratically-elected Councils of the sixteen Local Government Councils of Ekiti State of which the Plaintiffs/Respondents are the democratically-elected Chairman and/or replace them with appointed caretaker committees in breach of the aforesaid constitutional and statutory provisions?

DECISION/HELD: While dismissing the appeal, Nweze JSC in his leading judgment, to which other Justices, concurred, held:

(a) The Ekiti State House of Assembly derived its powers for enacting its said Local Government Law from the above constitutional provision, ie. Section 7 of the Constitution. Although the House of Assembly has power to make laws, (it) has no powers to make any law by giving the Governor power to truncate a democratically-elected Local Government Council.

(b) Having thus guaranteed the system of Local Government by democratically-elected Local Government Councils, the Constitution confers a

toga of sacro-sanctity on the elections of such officials whose electoral mandates derive from the will of the people freely-exercised through the democratic process.

(c) The election of such officials into their offices and their tenure are clothed with constitutional force. They cannot, therefore, be abridged without breaching the Constitution from which they derive their force. **The only permissible exception, where a State Governor could truncate the life span of a Local Government Council which evolved through the democratic process of election, is for over-riding public interest in a period of emergency. In effect, where such is the situation, as even nature itself abhors any vacuum, the Governor would be entitled to empanel a caretaker committee.** Anything outside that is an unwarranted affront to the Constitution. (Emphasis mine).

(d) The draftsperson of Section 7(I) (supra), surely intended to impose (and, actually, imposed) an obligation on the States to ensure the continued existence of Local Government Councils which are democratically-elected. The said section connotes a command; an imperative requirement: a

constitutional direction which yields no room for discretion. The implication therefore is that Section 23B (supra), which was not intended to ensure the existence of such democratically-elected Councils, but to snap their continued existence by their substitution with caretaker committee, was enacted in clear breach of the supreme provisions of Section 7(I) of the Constitution (supra). To that extent, it (Section 23B), supra) cannot co-habit with Section 7(I) of the Constitution (supra) and must in consequence, be invalidated. Hence, it is bound to suffer the fate of all laws which are in conflict with the Constitution. See Section 1(3) of the Constitution.

Again in Eze and Ors V Governor of Abia State and Ors the Supreme Court followed a similar route.
Too:

CASE 2:

EZE & ORS V. GOV OF ABIA STATE & ORS (2014) LPELR-23276(SC)

FACTS: The appellants were elected by the people of Abia State to serve as Chairmen, Vice-Chairmen and Councilors in the State's Local Government Councils. The tenure was for a fixed term of three years (3 years).

The appellants assumed office and commenced the work for which they were elected. On the 16th day of June, 2006 the Governor (i.e. the 1st respondent) dissolved all the Local Government Councils and appointed Caretaker Committees. The action was vigorously pursued all through to the Supreme Court.

ISSUE: Whether by the provisions of Section 7 of the 1999 Constitution and the provisions of the Abia State Local Government Law as amended, the 1st defendant has the Legal competence to dissolve the Local Government Councils of Abia State and appoint Caretaker Committees to replace elected members of the said Local Government Council.

The Supreme Court as Rhodes Vivors JSC held that:

(a) It is duty of the Governor to ensure that the system of Local Government continues unhindered. Dissolving Local Government Councils and replacing them with Caretaker Committee amounts to the Governor acting on his whims and fancies, unknown to our laws, clearly illegal. It is the duty of the Governor to ensure their existence rather than being responsible for destroying them. It amounts to executive recklessness for the 1st respondent to remove from office democratically elected Chairmen, and Councilors and replace them with unelected Chairmen and

Councilors under whatever guise.

(b) 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. A Court of equity will not allow the executive to get away with wrongful acts rather it would call the executive to order and ensure that justice is not only done but seen to be done. Equity regards as done that which ought to have been done.

(2) Another case of violations of the rule of law is the encroachment by other levels ofl government on the revenue sources of the local government by taking over taxes or executing revenue yielding projects that the law had made exclusive to local governments. The Supreme Court in *Knight Frank and Rutley (Nig) and Anor V AG Kano State* 4(1998)LPELR-16949SC) held that:

(a) The Constitution has guaranteed the existence of a Local Government once one is established, and the Government of Kano State established all the Local Government throughout the State. By the tenor of the Kano State Edict No. 5 of 1977, particularly section 3, 4 and 76 of the Edict, the existence of these Local Governments is made as separate entities from the

State Government. They are independent bodies whose functions are also well set out and defined.

(b) The collection of rates on rateable hereditaments and the assessment of rates on privately owned houses are subjects within the responsibilities of local government councils pursuant to section 7 of the Constitution. Thus, the main purpose for which the contract was entered into corresponds with the functions allotted to local government above. It is beyond any doubt that it was the Local Governments in Kano State that possessed the power to assess, impose and collect rates on privately owned property.

(c) There is no legislation which empowers Kano State Government to dabble in or interfere with the compilation of valuation list for the purpose of assessing or collecting rates on private properties in Kano State. Therefore, the Government acted ultra vires in entering into contract with the appellants to do what only the Local Government Councils were entitled to do under the 1979 Constitution and the Local Government Edict, 1977. Constitutionally, the

Government had no power to award the contract and it acted ultra vires in doing so.

Akpan N Ekpe, (1976–2007 : 8, 13) also discussed extensively such gross violations of the rules. According to him

> *In 1988, Calabar municipality challenged jurisdiction of the state government for taking over environmental sanitation fees from the council… Again in 1988, Akwa Ibom state government usurped business premises/stallege from Uyo local government through arbitrary collection from the occupants of Uyo Multi Complex Shopping Center along Ikot Ekpene Road.*

Again, there were cases where state governments used the instrumentality of the state - Local Government Joints Accounts Committee to tamper with statutory allocations of council". There have been cases where elected council chairmen and councillors were sacked at the will and caprices of the governor. Consequently, Suberu (2004:16) lamented that "the architect of 1976 local government reform bewailed that local governments have produced

exactly the opposite of their original objectives". Which is that "instead of bringing development closer to the people in the grassroot, they bent on producing absentee chairmen who are seen only at the council headquarters when the monthly "Abuja Allocations" arrive and vamoose with their standby Jeeps and mobile police escorts after super-intending over the sharing of the national cake among the relevant stake holders".

It May be most appropriate to end this chapter with the notable pronouncement of Ogwuegbe J.S.C. in *Knight Frank and Rufley (Nig) and Anor V Ag Kano State* (Supra)

> *There is everything wrong in the State Government entering into the contract with the appellants. Given the circumstances of this case, I would say that the Kano State Government was meddling in the affairs of the Local Government Councils. It was not exercising supervisory powers over the activities of the Local Government Councils. It has no power to prepare a Valuation List of the properties let alone enter into an agreement for that purpose. I agree with the Court of Appeal when it held*

as follows:

Since the Kano State Government has no power over assessment of tenements (sic) rates, it goes without saying that it has no jurisdiction to enter into any agreement with any body or person for the valuation of rateable hereditaments.

I must here emphasize that Local Government Councils should be spared this type of illegitimate intrusion or interference by State Government in functions specifically assigned to the former by the Constitution. It is my considered view that the Kano State Government does not possess concurrent jurisdiction with the Local Government Councils in Kano Metropolis over the functions set out in the Fourth Schedule to the Constitution.

The House of Assembly of a State may by law prescribe the type of rates to be levied on such privately owned houses or tenements. The assessment and collection of such rates are exclusively the function of the local government council as guaranteed by the Constitution and not by the State Legislature. Paragraph 1 (j) of the Fourth Schedule to the Constitution is

clear and unambiguous. The State Legislature of the Military Administrator during the present dispensation has no business in the assessment and collection of rates in respect of the premises stated in the said schedule. It will amount to a usurpation of the power of the Local Government Council for the State Government to carry out such exercise or engage any person or authority to do so in its behalf.

CHAPTER THREE

THE STRUCTURE OF LOCAL GOVERNMENT ADMINISTRATION IN ENUGU STATE

Local governments in Enugu State are the creations of law and operate within the ambit of various laws. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) is the Supreme law in Nigeria. Section 7 jointly read with section 8 of the Constitution provides for the existence and structure of the local government. The sections provide that there shall be:

> *The system of local government by democratically elected councils which is by 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. structure, composition, finance and functions of such councils.*

In accordance with section 8 of the Constitution the government of Enugu State enacted a law:

> *Local Government Law, Revised Laws of Enugu State of Nigeria 2004 A law to make provisions for the establishment structure, composition, finance and functions of local government councils.*

Section 3(1) of the local government law states that,
"the system of local government shall under this law, be by democratically elected Local Government Councils". Section 4(1) of the law also states that, "that there shall be a Local Government Council for each Local Government Area in the State". Enugu State has seventeen (17) Local Government Areas.

The main concern of this chapter is to explore, analyse and assess how the major organs and structures of administration established by the Local Government works, especially within the ambit of law. Consequently

we shall examine the nature of the local governments, its organs – the Legislature and the Executive organs and their relationships and inter-relationships, the career public servants and their functions and other institutions that were established by the law to ensure that Local Governments work well. In consonance with the theme of the work, our main concern would be to establish how the law rules or should rule in the administration of the Local Governments.

3.1 PRESIDENTIAL STRUCTURE OF THE LOCAL GOVERNMENT LAW

The Local Government law did not anywhere expressly state that it is presidential. It has however a presidential structure of government. This is evident in the following structures:

(i) The Chairman is elected directly by the electorate

(ii) There is a separate legislature and executive council

(iii) The Chairman appoints his Supervisors from outside council members. Any elected Councillor who is appointed a supervisor of the local government council shall be deemed to have resigned from seat as a councillor on taking the oath of

office as a supervisor

(iv) Only councillors belong to the legislative council. One councillor is elected from every ward in a Local Government

(v) The executive implements the laws and policies of the government and the council, the executive does not perform legislative roles

(vi) The legislature does not perform executive functions

(vii) Each organ of government, that is Legislature and the Executive serve as a check against the actions of the other

(viii) The Chairman of the local government and the members of the council have fixed tenure

The features mentioned above depict that the principles of separation of power are embedded in the Local Government Law of Enugu State. At this stage attention would be given to the political structure of the local government as provided in the law.

3.2 THE POLITICAL STRUCTURE OF LOCAL GOVERNMENTS

3.2.1 THE EXECUTIVE ORGAN

3.2.1.1 The Chairman

See sections 7, 8, 9, 10, 11, 14, 15, 17, 18, 25 of the local government law. See also, FRN, Model Financial Memoranda for Local Government (2009: 17-18).

The Chairman is the Chief Executive and Accounting Officer of the Local Government. The Chairman in the exercise of this function performs the following functions:

(1) Assign to the Vice-Chairman executive responsibility for any business of the local government including –
   (a) Chieftaincy and town union matters
   (b) Boundary disputes and adjustment
   (c) Intra and Inter Community or town conflict.
   (d) Other functions from time to time

(2) In his discretion assign to any supervisor of the local government responsibility for any business of the local including the administration of any department of the local government

(3) The Chairman shall hold regular

meetings with the Vice-Chairman and all the supervisors of the local government for the purposes of:

(a) Determining the general direction of the policies of the local government council.

(b) Coordinating the activities of the local government council: and

(c) Generally discharging the executive functions of the local government council.

(4) Chairman of the Finance and General Purpose committee. Other members of the committee include:

(a) The Chairman of the Local Government who shall be Chairman.

(b) Vice-Chairman

(c) The Secretary to the Local Government

(d) All the Supervisors

(e) The Head of Personnel Management; and

(f) The Treasurer of the Local Government

1. Chairman of the Local Government Security Committee. By virtue of this position the Chairman of the Local Government is the Chief Security Officer of the Local Government.

The functions of the Security Committee includes:

(a) The constant review of questions relating to the enforcement of Bye-laws made by the Local Government.

(b) Investigation of and comment upon complaints lodged about the activities of the policemen in the area of authority of the Local Government;

(C) Giving advise relative to general maintenance of law and order in the area of authority of the Local Government; and

(d) Making recommendations in respect of the foregoing to persons mentioned in section 50(2) of this law

Note that the persons mentioned in section 50(2) of the law include:

(a) The Governor of the state

(b) The Commissioner of police of the State

(c) The ministry of Local Government of the State.

3.3 THE STRUCTURE OF THE LEGISLATIVE COUNCIL

THE LEGISLATIVE COUNCIL: See sections 27, 28, 29, 30, 31, 32 of the Local Government Law 2004

3.3.1 THE LEADER OF THE COUNCIL

The Law established the Office of the Leader of the Local Government Council and a Deputy Leader. The Legislative Council is unicameral.

The Leader's role in the council is like that of the Speaker in the House of Assembly or House of Representative and the President of the Senate, Nwabueze has succinctly described the functions of the President of the Senate and of the Speaker of the House and we adopt it as a fitting, description of the functions of the Leader of the Local Government Legislative Council. He said:

> *The President or the Speaker or any one else presiding at a sitting of the house has wide powers to rule on the meaning and requirement of the constitution in so far as they are relevant to the proceedings of the house, what majorities are required for various actions, whether a quorum is present, whether a matter proposed for decision has been carried, whether the house is competent to adopt certain measures, whether the absence of a member is for just cause, or not etc:*

to interpret the Standing Orders, to rule on the relevance of a member's contribution and on other points of order, to ensure orderly debate, and generally to enforce order and discipline in the house.

According to Section 28(1)(2) of the Local Government Law 2004

(i) The Legislative Council of each local government is the legislature of the Local Government of that Area.

(ii) The legislative powers of a local Government is exercised by the Legislative Council.

(iii) A Leader and a Deputy leader of a Legislative Council are to be selected by the Councillors from among themselves.

(iv) The Legislative Council sits for a period of not less than one day in a week.

(v) The legislative Council shall record a minimum of ninety-six sittings in any calendar year.

(vi) Subject to the provisions of this law, the Legislative Council shall regulate its own procedures, including the procedure for summoning and

recess of the Local Government Council.

(vii) At a sitting of the Legislative Council, the leader shall preside and in his absence the Deputy shall preside and in the absence of the leader and the Deputy leader any other member of the Council elected for that purpose, may preside.

(viii) The quorum of Legislative Council shall be one-half of all the members of the Council.

(ix) Any question proposed for decision in the Legislative Council shall be determined by a simple majority of the members present and voting, and the person presiding shall have a casting vote whenever necessary to avoid equality of votes.

3.4 LAW MAKING IN THE LOCAL GOVERNMENT COUNCIL

(i) The legislative powers vested in the Local Government Council is exercised by bye-laws passed by the Legislative Council and assented to by the Chairman of the Local Government Council.

(ii) A bye-law shall not become law unless it has

been passed, subject to subsection (1) of this section and assented to in accordance with the provision of this section.

(iii) Where a bye-law has been passed by the Legislative Council, it shall be presented to the Chairman of the Local Government who shall within 30 days signify that he assents or he withholds assent.

(iv) Where the Chairman of the Local Government withholds assent and the bye-law is again passed by the Legislative Council by two thirds majority, the bye-law shall become law and the assent of the Chairman of the Local Government shall not be required.

(v) Where there is inconsistency between a bye-law passed by the Legislative Council and a law passed by State House of Assembly, that bye-law shall, to the extent of its inconsistency be void and that of the State House of Assembly shall prevail

3.5 FUNCTIONS OF THE LEGISLATIVE COUNCIL

See the Local Government Law (2004: sections 33, 34). See also the FRN; model financial memoranda for Local Government (2009: 13)

(a) Debating, approving and amending the annual budget of the Local

Government subject to the Chairman's veto which may be set aside by two thirds majority of the Legislative Council;

(b) Vetting and monitoring the implementation of projects and programmes in the annual budget of the Local Government;

(c) Examining and debating monthly statement of income and expenditure rendered to it by the Local Government;

(d) Advertising, consulting and liaising with the Chairman of the Local Government;

(e) Performing such other functions as may be assigned to it, from time to time, by a Law of the State; and

(f) Contributing two percent of their monthly allocations to the State Common Services Fund.

Other ancillary functions of the Council can be further broken down and elaborated as follows:

(i) The right and power to hold investigations

Investigative power is a power axillary and subordinate to the legislative power of law making. This is because pertinent facts have to be ascertained as a basis for legislation. Honorable Judge Daly of New York in SUSU

B. A. (1992:2) explains it thus in reference to the two legislative bodies in the United States of America. According to him:

> *...where no constitutional limitation or restriction exists. It is competent for either of the two bodies composing the legislature, to do in their separate capacity, whatever may be essential to enable them to legislate. It is a well established principle of this parliamentary law that either house may institute any investigation having reference to its own organization ... or any matter affecting the public interest upon which it may be important that it should have exact information, and in respect to which it would be competent for it to legislate. The right to pass laws necessarily implies the right to obtain information upon any matter which may become the subject of a law.*

The 1999 constitution as ammended granted such similar investigatory powers to the House of Assembly. A House of Assembly have power by resolution

published in its journal or in the official gazette of the government of the State to direct or cause to be directed an inquiry or investigation into:-

(a) Any matter or thing with respect to which it has power to make laws and

(b) The conduct of affairs of any person, authority, ministry or government department charged or intended to be charged, with the duty of or

(i) Executing or administering laws enacted by that House of Assembly, and

(ii) Disbursing or administering moneys appropriated or to be appropriated by such House.

These powers were conferred on a House of Assembly to enable it.

(a) make laws with respect to any matter within its Legislative competence and correct defects in existing laws and

(b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.

The financial memoranda, the financial document, which defines and guide all financial transition in local government has also expressly stated that:

In regard to financial matters the local government council is the watchdog of the local government and it may properly inquire into proposals made by the Executive committee and call for reports if it suspects such things as waste or overspending.

(i) **The Council,** Nwoba (2015: 217) states is invested with the legal power to hold investigations. "This is done in the course of performance of its oversight functions". For Ameze (1992: 5), it will enable the Council to "prevent and expose corruption, inefficiency or waste in disbursement or administration of funds appropriated by it". The Council in doing this may create committees for t h e investigation and ascertainment of facts concerning the transactions of the Executive council financially and otherwise.

(ii) The Council has the "power of the purse" Appropriation Bill is significant because it is the basis of the executive plans for the running of the government in any fiscal year. The Local Government law provides that the council must consider and pass the enabling bill before the money is appropriated. That is to say that Local Government money cannot be raised or spent without the approval of the Council (Ameze).

(iii) The council plays the role of interest articulation and aggregation

Different groups, Nwoba states usually champion their interest through the elected councillor who takes it to the executive Chairman for proper handling".

(iv) The council also plays the representative function

They are closer to the people more than any other organ of government and stand between the people and the Local Government. In this representative role they can act as opinion moulders, conveyors of public opinion, promoters of popular participation of the people in the affairs that concern them.

(v) Removal of Chairman or Vice Chairman from Office, see Section 14(1) to 16(1) of the Local Government Law 2004

In removing the Chairman or the Vice Chairman, the Legislative Council would follow a quasi-judicial process. The quasi-judicial process is often called Impeachment. The Black Law Dictionary 5th edition (P.678) defined Impeachment as a "quasi-criminal proceeding against a public officer before a quasi-court, instituted by a written accusation called "articles of Impeachment". It is important to note that the Enugu State law did not use the word Impeachment. The

phrase it used is "removal from office" and that the Chairman or Vice-Chairman could be removed by the Legislative Council from Office if he is found guilty of gross misconduct in the "performance of the functions of his Office". Gross Misconduct is defined by the Local Government Law 2004: Section 14 (ii) as a grave violation of the Oath of Office or grave breach of the provisions of the law or a misconduct of such a nature as amounts in the opinion of the local government council to gross misconduct.

The law and even the 1999 constitution did not categorically define Impeachable offences. The vagueness of the definition consequently confers unfettered discretion on the councils or the legislature to determine what "grave misconduct" is. Therefore, a Chairman may be 'impeached' for offences of a political character, for abuses or betrayal of trust, for breach of official duty, for neglect of duty. The elasticity of the term gross misconduct can be stretched so far and Nwabueze (1982:29) made this observation in the case of Alhaji Balarabe Musa's impeachment by the House of Assembly, Kaduna State. He said that:

> *The situation that gave rise to the invocation of the impeachment procedure in Kaduna was hardly one contemplated by that procedure ... the violation alleged*

> *against the governor assuming them to be well founded, were not of the gravity contemplated by the constitution as warranting the impeachment of the chief executive of the State.*

In a similar vein Professor Holcombes in his Judgment in the removal of Governor Sulzer of New York said:

> *He was removed from office nominally on account of filing an incorrect return of his campaign expenses and suppressing evidence sought by a legislative committee appointed to investigate his alleged conduct. He was really impeached because he had defied the political "machine" to which he owed his nomination and election and had sought to make himself the leader of the "organization"*

Therefore, one can be removed from office for reasons ranging from insubordination to disloyalty to the political party in power and that in fact is the danger that could arise from the elasticity of the words "gross misconduct". The subjective opinion of the legislature can amount to gross misconduct and this is indeed

amenable or prone to abuse. In the transition period of General Ibrahim Babangida their were spate of impeachment in the Legislative Councils across the country to an extent that threatened the democratic process and democratization at the local government level. What alarmed the public was the recklessness and selfishness that characterized the exercise by various legislative Councils across the country. In one instance as reported by Newswatch (15 Jun 1992:) the Chairman of Mushin Local Government, Mr. Babatunde Odele was threatened with impeachment by the council for what the council termed arbitrary award of contracts without prior consultation with the council. He challenged the move in court. Later in an intriguing diametrically opposite stand the council passed a vote of confidence on him.

It is this danger of abuse that must be guarded in the operation of this constitutional and statutory concept that was simply designed to check the arbitrariness, recklessness or incompetence of Chairmen of local governments. However what is important is for us to understand that impeachment process is a judicial process but which has in conformity with the principles of checks and balances become a legislative instrument.

In order to avoid, eliminate or reduce the spate of carelessness, illegalities and irrationality that had often

characterised removal of Chairmen from office, it is necessary to discuss extensively the procedure that must be fulfilled in the removal of a Chairman.

(1) The Chairman or Vice-Chairman may be removed from office in accordance with the provisions of Section 14(1) to Section14(1a) of Enugu State Local Government Law (2004). It goes as follows

(2). Whenever a notice of any allegation in writing signed by not less than one-half of the members of the Local Government Council.

(a) is presented to the Secretary of the Local Government; and

(b) stating that the holder of such office is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, or that the said holder of such office has been indicted by the Auditor-General in his report, the Secretary of the Local Government shall within 7 days of the notice cause a copy thereof to be served on the holder of the office and on each member of the Local Government Council and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of Local

Government Council.

(3). Within 14 days of the presentation of the notice, (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) the Local Government Council without the holder of the office being present at the meeting shall resolve by motion without any debate whether or not the allegation shall be investigated.

(4). Within 7 days of the passing of a motion under subsection (3) of this section, the Secretary of the Local Government shall inform the Chief Judge of the State who shall appoint a panel of 7 persons who in his opinion are of unquestionable integrity not being members of any-

(a) public service;
(b) legislative house, or
(c) political party

to investigate the allegation as provided in this section. The Secretary shall within the same period, also inform the Governor accordingly.

(5). The holder of any office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the panel by a legal practitioner of his choice.

(6). The Panel appointed under this section shall

have such powers and exercise its functions in accordance with such procedures as may be prescribed by law; and within three months of its appointment, report its findings to the Local Government Council, but where the allegation to be investigated is based on the Auditor-General's report, the panel shall within one month of its appointment, report its findings to the Local Government Council.

(7). Where the panel reports to the Local Government Council that the allegation has not been proved no further proceedings shall be taken in respect of the matter.

(8). Where the report of the Panel is that the allegation against the holder of the office has been proved, then within 14 days of the receipt of the report, the Local Government Council shall consider the report without the holder of the office being present at the meeting and if by a resolution of the Local Government Council supported by not less than two-thirds majority of all its members the report of the Panel is adopted then the holder of the office shall stand removed from office as from the date of the adoption of the report.

(9). Where the allegation against the holder of such office is based on the report of the Auditor-General, such person may be suspended from

office by the Governor from the date of the passing of the motion under subsection (3) of this section until the final determination of the case.

(10). Without prejudice to the generality of the foregoing provisions of this section, when the holder of such office is indicted by the Auditor-General in his report, the Governor, may within 7 days of the receipt by him of the said report direct the Chief Judge of the State to appoint a panel as mentioned in subsection (4) of this section, to investigate the allegation as provided in this section, and suspend such person from office pending the determination of his case. Subsection (5), (6), and (8) of this section shall apply to the said panel and its report.

11. In this section "gross misconduct" means a grave violation of the Oath of Office or grave breach of the provisions of this Law or a misconduct of such nature as amounts in the opinion of the Local Government Council to gross misconduct.

Section 15(a)-15(4)(b) also provides for the removal of the Chairman on the ground of permanent incapacity to hold office. It said, thus:

(1). The Chairman or Vice-Chairman shall cease to hold office if-

(a) by a resolution passed by two-thirds

majority of all the members of the Local Government Council it is declared that the Chairman or the Vice-Chairman as the case may be is incapable of discharging the functions of his office; and

(b) the declaration is verified after such medical examination as may be necessary by a medical panel established under subsection (4) of this section in its report to the Secretary and the Leader of the Local Government.

(2). Where the medical panel certifies in such report that in its opinion, the Chairman or Vice-Chairman is suffering from such infirmity of body or mind as to render him permanently incapable of discharging the functions of his office, a notice thereof signed by the Secretary of the Local Government shall be published in the Gazette of the Government of the State.

(3). The Chairman or Vice-Chairman shall cease to hold office from the date of publication of the notice of the medical report pursuant to subsection (2) of this section.

(4). The medical panel to which this section refers shall be appointed by the Leader of the Local Government Council and shall comprise three

medical practitioners in Nigeria.

(a) one of whom shall be a medical practitioner of the choice of the officer concerned; and

(b) two other medical practitioners

.

It is worthy that the procedural requirement for removing a Chairman or Deputy Chairman under section 14(I) to 14(II) of the Local Government Law 2004 are the same in material particular with the procedural requirements in removing a Governor of a State under Section 188 of the 1999 Constitution (as amended). The Supreme Court of Nigeria had the opportunity of engaging in a thorough juristic examination of Section 188 of the 1999 constitution (as amended) and consequently made some guiding principles on the matter in the case of *Inakoju V. Adeleke* (2007) 4 N.W.L.R Part 1025 423-755.

The brief facts of the case are as follows: In May 2003, Rashidi Ladoja was sworn in as the Governor of Oyo State. Towards the end of 2005, the members of the State House of Assembly became polarized due to political disagreement. While 18 members of the House were against the Governor, 14 members were in his support. On the 13th day of December, 2005, the 18 Legislators who were opposed to the Governor held a sitting at D'Rovans Hotel, Ring Road, Ibadan. The sitting

was held in the absence of the Speaker and Deputy Speakers of the House of Assembly as they were part of the 14 legislators who were in support of the Governor, Rashidi Ladoja. During the sitting, they raised a notice of gross misconduct against the Governor and served same on him through a newspaper advert. Subsequently, they requested the State Chief Judge to set up a panel to investigate the allegation of gross misconduct. The Chief Judge did this. The panel sat for 2 days, took no oral evidence from anybody including the Ladoja, the Governor, then submitted their recommendation to the 18-man faction of the House. They went ahead to remove the Governor based on the recommendation of the panel.

In reaction to the removal, the 1st and 2nd Respondents filed an action at the Oyo State High Court asking the court to inter alia determine whether the removal was valid and proper. The Appellant filed a Notice of preliminary objection contending that the court lacks the jurisdiction to enquire into the validity or otherwise of the removal. The High Court upheld the objection and dismissed the suit.

The 1st and 2nd Respondent appealed to the Court of Appeal successfully. The Court of Appeal set aside the decision of the High Court and granted all the reliefs sought by the Respondents.

The Appellants were dissatisfied with the decision of the Court of Appeal hence the appeal to the Supreme Court. In its part the Supreme Court as Per Ogbagu JSC said:

> *"...It is submitted that having regard to the provisions of the Constitution, in particular, sections 90 - 96, a House of Assembly does not mean a building but the members constituting the House. Thus, we submit a House of Assembly can sit anywhere to perform its legislative duties,..."*
>
> *"If anything leads to a ridiculous absurdity, Justice Ogbuagu pronounced, it is the above submission. So, if the members of the House of Assembly sit in the lead learned counsel's house to perform its legislative duties, his house will be the House of Assembly of the State! That cannot be so by any stretch of imagination. Were it to be so, then a Governor, who by section 108(1) of the 1999 Constitution, can attend the meeting of the House of Assembly either to deliver an address to the*

members, on State affairs or to make such statement on the policy of government as he may consider to be of importance to the State, in the sitting room of the House of any of the members or in a hotel. Frankly speaking, any such idea or suggestion, will be unacceptable to me, as it is not only nauseating to me, but will amount to the greatest absurdity of all times and a violence to sheer common sense. This submission shows again, how low undignified, some "learned counsel" can go or descend in the name of advocacy."

(a) The mace must be present at the sitting of the House.

(b) The proceedings of the House of Assembly should be held in parliamentary hours. This is the period the Rules have provided that the House should sit. On no account should proceedings of a House be held in unparliamentary hours; that is, during the

period not provided for in the Rules. For instance, a House of Assembly has no business to perform in the odd hours of mid- night or in the early hours of the morning before the parliamentary hours prescribed by the Rules.

(c) There must be a notice of allegation which must be presented to the Speaker for action within 7 days of his receipt of the notice.

(d) There must be service of the notice of allegation to each member of the House.

(e) The removal must be done by two-thirds majority of the members of the House of Assembly.

(f) The Speaker of the House must be involved in the removal.

In this case, the appellants contravened or breached the Constitution by the

following acts, to wit:-

(i) The holding of the meeting by the appellants at D'Rovans Hotel, Ring Road, Ibadan instead of on the floor of the House of Assembly.

(ii) The absence of a constitutional notice of allegation against the 3rd respondent.

(iii) The non-service of a constitutional notice of allegation against the 3rd respondent.

(iv) The failure to obtain the constitutionally required two-thirds majority of all the members of the House for the removal of the 3rd respondent.

(v) The non-involvement of the Speaker in the so-called proceedings leading to the removal of the 3rd respondent.

(vi) The unconstitutional procedure adopted in the suspension of Order of the House of Assembly. In other words, the unconstitutional application of rule 23 of Draft Rules of the Oyo State House of Assembly.

The 1999 Constitution (as amended) defined the words gross misconduct in nebulous and fluid that manner that it can be abused and oppressive.

However Tobi JSC in the case under reference extensively and exhaustively pronounced on it and provided instances, circumstances, actions and inactions that a charge of gross abuse can be laid on any Governor of a State for the purpose of impeachment. He said:

On What amounts to gross misconduct for purpose of removal of Governor or Deputy Governor

under section 188 of 1999 Constitution.

The word "gross" in section 188(11) of the 1999 Constitution means generally in the context atrocious, colossal, deplorable, disgusting, d``readful, enormous, gigantic, grave, heinous, outrageous, odious and shocking. All these words express some extreme negative conduct. Therefore a misconduct which is the opposite of the above cannot constitute gross misconduct. Whether a misconduct is gross or not will depend on the matter as exposed by the facts. It cannot be determined in vacuo but in relation to the facts of the case and the law policing the facts.

(ii) Gross misconduct is defined as:

(a) a grave violation or breach of the provisions of the Constitution and

(b) a misconduct of such nature

as amounts in the opinion of the House of Assembly to gross misconduct.

(iii) By definition, it is not every violation or breach of the Constitution that can lead to the removal of a Governor or Deputy Governor. Only a grave violation or breach of the Constitution can lead to the removal of a Governor or Deputy Governor. Grave in the context does not mean an excavation in earth in which a dead body is buried, rather it means, in my view, serious, substantial, and weighty.

The following, in my view, constitute grave violation or breach of the Constitution:

(a) Interference with the constitutional functions of the Legislature and the Judiciary by an exhibition of overt unconstitutional executive power.

(b) Abuse of the fiscal provisions of the Constitution.

(c) Abuse of the Code of Conduct for Public Officers

(d) Disregard and breach of Chapter IV of the Constitution on fundamental rights.

(e) Interference with Local Government funds and stealing from the funds or pilfering of the funds including monthly subventions for personal gains or for the comfort and advantage of the State Government.

(f) Instigation of military rule and military government.

(g) Any other subversive conduct which is directly or indirectly inimical to the implementation of some other major sectors of the Constitution.

(v) The following in my view, are some acts which in the opinion of the House of Assembly, could constitute grave misconduct:

(a) Refusal to perform constitutional functions.

(b) Corruption.

(c) Abuse of office or power.

(d) Sexual harassment. I think I should clarify this because of the parochial societal interpretation of it to refer to only the male gender. The misconduct can arise from a male or female Governor or Deputy Governor as the case may be.

(e) A drunkard whose drinking conduct is exposed to the glare and consumption of the public and to public opprobrium and disgrace unbecoming of the holder of

the office of Governor or Deputy Governor.

(f) Using, diverting, converting or siphoning State and Local Government funds for electioneering campaigns of the Governor, Deputy Governor or any other person.

(g) Certificate forgery and racketeering. Where this is directly connected, related or traceable to the procurement of the office of the Governor or Deputy Governor, it will not, in my view, matter whether the misconduct was before the person was sworn in. Once the misconduct flows into the office, it qualifies as gross misconduct because he could not have held the office but for the misconduct. Such a person, in my view, is not a fit and proper person to hold the office of Governor or Deputy Governor. It is merely saying the obvious that a Governor or Deputy Governor who involves in certificate forgery and

racketeering during his tenure has committed gross misconduct".

"It is not a lawful or legitimate exercise of the constitutional function in section 188 for a House of Assembly to remove a Governor or Deputy Governor to achieve a political purpose or one of organised vendetta clearly outside gross misconduct under the section. Section 188 cannot be invoked merely because the House does not like the face or look of the Governor or Deputy Governor in a particular moment or the Governor or Deputy Governor refused to respond with a generous smile to the Legislature qua House on a parliamentary or courtesy visit to the holder of the office. The point I am struggling to make out of his light statement on a playful side is that section 188 is a very strong political weapon at the disposal of the House which must be used ony in appropriate cases of serious wrong doing on the part of the

> *Governor or Deputy Governor, which is tantamount to gross misconduct within the meaning of subsection (11). Section 188 is not a weapon available to the Legislature to police a Governor or Deputy Governor in every wrong doing. A Governor or Deputy Governor, as a human being, cannot always be right and he cannot claim to be right always. That explains why section 188 talks about gross misconduct. Accordingly, where a misconduct is not gross, the section 188 weapon of removal is not available to the House of Assembly".*

Again in *Akinmade & 16 Ords V Ajayi [*2008] 12 NWLR498 *in the Court of Appeal (Ibadan Division)*
The respondent was the Chairman of Abeokuta South Local Government Ogun State, but was impeached by some of the appellant on 9th of January, 2006. The respondent, not satisfied with the manner of his impeachment, filed an originating summons at the High Court of Ogun State, where he sought a determination of the following question: Whether the purported impeachment of the plaintiff from office as the Chairman of the Abeokuta

South Local Government by the 1st - 13th defendants on 9th January, 2006 was in accordance with the provisions of Section 37 of the Local Government Laws of Ogun State, 2000. According to the respondent, he was suspended from office by the Governor of Ogun State on 17th October, 2005 and purportedly impeached on 9th January, 2006. He contended that no notice of impeachment was served on him and no panel was set up by the Governor of Ogun State to investigate any allegation against him. After the impeachment, the 10th appellant started parading himself as the Chairman of the said council.

In response, the appellants filed a preliminary objection to the effect that the court lacked jurisdiction to entertain the suit on the ground that it was purely a legislative matter. The trial court overruled the objection and held that the court had jurisdiction to entertain the suit. Being dissatisfied with the ruling, the appellants appealed to the Court of Appeal.

In determining appeal, the Court of Appeal considered the provision of Section 37(1) (10) of the Local Government Law of Ogun State, 2000 which states as follows:

37(1) The Chairman or Vice-Chairman may be removed from office in accordance with the provisions of this section.

2. Whenever a notice of any allegation of

misconduct in writing signed by not less than one half of the members of the council is presented to the Clerk of the Council stating that the holder of the office of Chairman or Vice-Chairman is guilty of misconduct in the performance of the functions of his office detailed particulars of which must be specified, the Clerk of the Council shall within 7 days of such notice cause a copy of the notice to be served on the holder of the office and on each member of the Council and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the Council.

3. Within 14 days of the presentation of the notice whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice the Council without the holder of the office being present at the meeting shall resolve by motion without any debate whether or not the allegation shall be investigated.
4. A motion of the Council that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of a single majority of all the members of the Council.
5. Within 7 days of the passing of a motion under subsection (4) of this section, the Clerk of the Council shall inform the Governor of the State

who shall appoint a panel of five persons who in the opinion of the Governor are of unquestionable integrity not being members of:

(a) any public or civil service or

(b) a legislative house or

(c) a political party

To investigate allegation as provided in this section

6. The Chairman of the panel shall be a legal practitioner of not less than 10 years post call experience.

7. The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the panel by a legal practitioner of his own choice.

8. An panel appointed under this section shall:

(a) have such powers and exercise its functions in accordance with such procedure as may be presented by the applicable enabling law and until such law is made in accordance with the rules of fair hearing and

(b) within three months of its appointment report its findings to the Council.

9. Where the panel reports to the Council that the allegation has not been proved no further

proceedings shall be taken in respect of the matter.

10. Where the report of the panel is that the allegation against the holder of the office has been proved, then within 14 days of the receipt of the report, the Council shall consider the report with the holder of the office being present at the meeting and if by a resolution of the Council supported by not less than two third majority of all its members, the report of the panel is adopted then the holder of the office shall stand removed from Office as from the date of the adoption of the report."

Unanimously dismissing the appeal the court held that:

(I) There is no subsection in section 37 of the Local Government Law of Ogun State that equates with section 188(10) of the 1999 Constitution to preclude the High Court from entertaining case relating to impeachment of a Local Government Chairman. There must therefore be compliance with the procedure for the removal of a Chairman or Vice-Chairman before an impeachment would be allowed to stand. In this case, the trial court was right in overruling the respondents preliminary objection see also (*Ekpo v. Calabar Local Government Council* (1993) 3 NWLR (Pt. 281) 324; *Ekekeugbo v. Fiberesima* (1994) 3 NWLR (Pt.

335) 707; *Jimoh v. Olawoye* (2003) 10 NWLR (Pt. 828) 307 referred to)

ii)Where the Constitution or a law requires a precondition before a particular act or substantive or main act or action is to be done, non fulfillment of the pre-condition will be prejudicial to the party in default. [*Ekpo v. Calabar Local Government Counci*l (1993) 3 NYVLR (Pt. 281) 324; *Jimoh v. Olawoye* (2003) II NWLR (Pt. 828) 307; *Adeleke v. Oyo State House of Assembly* (2006) 16 NWLR (Pt. 1006) 608; *Ahanbe v. Abia State House of Assembly* (2002) 13 NWLR (Pt. 788) 466; *Ainu v. Jinadu* (1992) 4 NWLR (Pt. 233) 91 referred].

iii It is within the province of the court to ensure strict adherence to the spirit of the Constitution for the endurance of a democratic regime see also (*Adeleke v. Oyo State House of Assembly* (2006) 16 NWLR (Pt. 1006) 608; *Inakofu v. Adeleke* (2007) 4 NWLR (Pt. 1025) 425 referred to.) (P. 512, paras. B-C).

The court of Appeal harped on the need for politicians to learn to abide by the rule of law for the sustenance and growth of democracy. In the notable words of AKAAIIS, J.C.A.

> *"It became necessary to consider this appeal on its merit if only to underpin the necessity for*

politicians at different strata of our society to learn to abide by the rule of law for the sustenance and growth of democracy. Military authorities can be pardoned for taking arbitrary decision because they are not accountable to any one as they derive their power through the barrel of the gun but the President, Governor or local government Chairman and all members of the National, State and Local Government Assemblies are elected by the people and therefore are accountable to the election. All their actions must be in accordance with the laws of the land, it is hoped that the era of frequent impeachment went with the last regime. It is also hoped that State governments will ensure that the State Electoral Commissions are empowered to fulfill their constitutional role of arranging local government election to be held at regular intervals to take over Councils whose tenure have expired instead of resorting to appointment of

Caretaker Committee, which are clearly undemocratic".

3.6 DISCHARGE OF FUNCTIONS OF CHAIRMAN

1. The Vice-Chairman shall hold the office of the Chairman of the Local Government if the office of the Chairman becomes vacant in accordance with section 14 or 15 of this Law.

2. Where any vacancy occurs in the circumstances mentioned in subsection (1) of this section during a period when the office of the Vice-Chairman is also vacant, the Leader of the Local Government Council shall hold the office of Chairman for a period of not more than 3 months during which there shall be an election of a new Chairman, who shall hold office as provided for in section 18 (3) of this Law.

3. Where the office of the Vice-Chairman becomes vacant-
   (a) by reason of death or resignation or removal in accordance with section 14 or 15 of this Law;
   (b) by his assumption of the office of Chairman in accordance with Subsection (1) of this section; or
   (c) for any reason.

the Chairman shall nominate and, with the approval of a majority of the members of the Local Government Council, appoint a new Vice-Chairman.

3.7 SEPARATION OF POWERS IN PRACTICE AND THE RULE OF LAW

A functional separation of power is expected to guarantee checks and balances among the different organs of power. They are supposed to share governmental powers and none of the organs would appropriate the powers of the other. Once this is not the case, it becomes the rule of man rather than the rule of law and authoritarianism becomes the order of the day. In a study carried out in Yobe State (2019: 3 – 16), the finding is that one of the problems facing presidential system of government at the local government level is executive interference in the legislative business and this is affecting the system. The factor of leadership, personality clash or egoistic rivalry between the legislature and the executive which affect service delivery was also established.

There are other factors responsible for this legislative and executive feud. For *Antigha Okon* (2013: 182) conflict theory "provides a framework for the understanding and analyses" of the phenomenon. According to him, the executive and the legislature

could be seen "as competing groups in a State struggling for the control of State policy apparatus as well as control and allocation of State resources". This is applicable at the level of the local governments. As stipulated by the principles of the rule of law, no arm of government should usurp the power or functions of another arm. There will be conflict if for instance the executive arm tries to expend what the legislature did not appropriate. Rules should be followed in order to have a disciplined society or organisation. Anything to the contrary would bring chaos, confusion and conflict. Executive dominance is, therefore, a recipe for confusion and feud between the legislature and the executive. The legislature is the hallmark of any democracy. As an independent arm of government it was meant to make laws for good governance, ensure equitable distribution and allocation of resources to all the segments of the local government area through its power of appropriation and most importantly acting as check on the executive so that the power of the executive is balanced. The importance of the oversight functions of the legislature, therefore must be emphasised.

Experience has shown that if the legislature does not exercise its oversight functions effectively, the road to the executive's mindless impunity, and lawlessness would have been widely created and the executive may

not be accountable to any person for their actions and inactions especially as regards public funds.

Given the fast and enormous responsibilities scheduled for a Councillor and the Council collectively by the local government law, the Constitution of the Federal Republic of Nigeria and other extant laws, rules and regulations like the Financial Memoranda, it becomes necessary to say that a vital part of a legislative council's capacity is the quality of the Councillors that make up the council. Councillors must be dedicated and committed to their rule making, power balancing and representation so as to meaningfully contribute to legislative performance. There should be collegiality approach in the functioning of their legislative duties. Once they are atomised and individualised by whatever guise they become victims of systematic manipulation and exploitation, some may even become the agent and mouthpiece of the executive. Their concern should be the well being of the legislative council as an institution. Councillors or a council that is characterised by integrity would certainly live up to expectation of the people they represent. However, both the executive and the legislature should “see their roles as mutually supportive”. Even in the face of separation of powers between them each needs the other to function properly. “Thus a harmonious relationship is the ideal both should aspire and pursue”.

Conflict between the two organs says *Atiga et al (2013)*, could be reduced or eliminated with "regular consultation, dialogue in resolving crises; regular interactions in meetings… mutual respect for each other, reorientation of legislators and executives on provision of the constitution with regards to functions and roles".

At the end, the wise counsel of Orewa and Adewumi (1983) cannot be controverted. According to them:

> *the effectiveness of the local government is judged... through the development it generates, social amenities it provides, and to what extent it has catered satisfactorily for the happiness and general well-being of the communities it was established to serve.*

3.8 LOCAL GOVERNMENT AND LOCAL GOVERNMENT COUNCIL

It is important to note that the Local Government and the Local Government Council are one entity. In *Hon. Engineer Kube Akila Owana v Hon Isimaila Ibrahim and ors* (2014) LPELR - 24165 (CA), the appellant in this case sought to make a distinction between Guyuk Local

Government and a Local Council.

The court holds that:

(i) By section 6 of the 1991 Constitution (as amended) a Local Government is a system, while by the Adamawa State Law, Cap 80 of 1997, the Local Government is the legal entity or personality that can be sue and be sued.

(ii) By this latter law, the Local Government Legislative council is not clothed with any life of its own and is therefore not a legal personality or a separate legal personality.

(iii) The legislative council is simply and purely the legislative arm of Guyuk Local Government Council.

(iv) The Adamawa State Local Government System, Establishment and Administration of Local Government Council's Law, No.4 of 2000 is certainly not an authority for the contention that the legislative council is a separate legal personality, for that law did not create any such legal personality separate from Guyuk Local Government.

CHAPTER FOUR

THE LOCAL GOVERNMENT SERVICE AS PUBLIC SERVICE

The administrative structure of a Local Government Council is manned by civil and public servants. A civil servant has been described as a selected person by a government who offered his/her services for the government and for the general public. The person is usually selected through a competitive examination or interview and has required educational and sometimes professional qualification. He is usually paid for his/her service and his/her duties and responsibilities are decided by his/her department officials, Olugben/ Peter Fasoluka: (2016). However it is not all that serve the government or the public that are called civil servants. A staff of the Local Government system is not a civil servant. He is not a civil servant because he works in a non – ministerial organisation. He is a public servant because he is appointed to serve government or the public. A civil servant may also be referred to as a public servant but a public servant may not be referred to as a civil servant. Politicians holding offices may also be referred to as public servants. According to Eniola, (1980: 33) the public service may be referred to as an organised body consisting of public servants (civil servants and elected or appointed officials), that provide essential service for the citizens of a country. Staff of Local Governments are therefore,

"Servants of Government".

4.1 THE PRINCIPLES GUIDING THE EMPLOYEES OF LOCAL GOVERNMENT

The employees of Local Government are also guided by the principles that guide the civil servants. These principles are:

(i) **The Principle of Permanence.** Staff of Local Government were recruited under the merit system. Their appointments are tenured. A Local Government employee's appointment terminates on attainment of 35 years of service or sixty (60) years of age as long as he has not been found wanting in his duties, or convicted for any criminal breach of the law or he has not voluntarily retired. "Governments come and go but, the Local Government Service remains".

(ii) **The Principle of Impartiality.**
This principle denotes that a staff of Local Government without bias serves or is expected to serve any government that comes, irrespective

of political, social, religious or ideological leaning.

(iv) **The Principle of Anonymity**

It is often said that the bulk stops on the table of the political leader – President, Governor, Minister, Commissioner or the Local Government Chairmen. He takes the praise or the blame. No matter the extent of the contributions of the servant – positive or negative, on the policies of the government, the staff cannot be praised or blamed. He is behind the screen. He can be seen but cannot be heard.

(iv) **The Principle of Neutrality**

A staff of Local Government retains his job even when there is a change of government because it is assumed that he is neutral and does not engage in partisan politics. He is there to serve any government in power. This is the difference between a staff of local government and a political office holder. A political office holder comes and

goes with whoever appointed him. A staff of Local Government can vote at elections but must discharge his duties without showing sympathy to any party or group. The watch word is his loyalty to the government in power.

4.2 LOCAL GOVERNMENT SERVICE AS BUREAUCRACY

The Local Government Service like the civil service is a form of bureaucracy. Max Weber, a German Sociologist popularised bureaucracy. Weber in Supra (2008) conceived bureaucracy as an organisation and defined an organization as an "ordering of social relationships". He identifies bureaucracy as the most rational and efficient form of organization devised by man. He in Supra (2008: 81) identifies the characteristic features of bureaucracy as follows:

(i) **Bound by Rules**

Bureaucracy functions with rules and this system of rules facilitates the standardisation of rules and the elimination of personal discretion and emotion.

The constitutionality of the civil service rules was judicially examined.

Busari v. Edo State Civil Service

Commission and Anor (1999) 4 NWLR 365.

The court of Appeal held that the civil service rules were made pursuant to powers conferred by virtue of constitutional provisions. The rules, therefore, have constitutional force. See also *Shitta- Bey v. Federal Public Service Commission* (1981), S.C. 40, *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 19) 599.

(ii) **A sphere of competence**

There is a functional division of labour in the incumbent in any office who has a defined area of competence and the necessary authority to carry out his functions.

(iii) **Principle of Hierarchy**

According to Weber "transaction of office follows the principle of hierarchy; that is, each lower office is under the control and supervision of a higher one.

(iv) **Need of specialised Training**

"The rules", Weber asserts "which regulate the conduct of an office may be technical rules or norms". The authority of the bureaucrat must

therefore, be based on his skill, knowledge and specialised training.

(v) **Impersonal detachment**

This presupposes a separation of office and office holder. In discharging his function the bureaucrat must be formal and impersonal and must not be influenced by his personal likes and dislikes.

(vi) **Keeping records**

This requires that all "administrative acts, decisions and rules are formulated and recorded in writing", and cannot be maintained through oral communication.

4.3 THE ROLES OF THE LOCAL GOVERNMENT SERVICE

Local governments are structured into departments. Each department is designed to perform a specialized function. Rules and regulations are established to guide their operations under a system of graded authority with clearly defined pattern of activity which is supervised and coordinated to achieve the corporate objectives of local governments.

The local government staff is the instrument for the achievements of the objectives of local government. His

functions or responsibilities towards the achievement of these objectives are not different from the responsibilities of other public servants in the state and federal government service. These functions include:

(i) Formulation of government policy. Policy Formulation is not exclusive to politicians, ideally given a chance to contribute to the process of formulation of policy. When all inputs are made and coordinated and options are canvassed it is now left for the chief executive to take his decision.

(ii) Execution of government policy as soon as it is settled. Once a policy is enunciated and defined the public servant carries out the programme faithfully, impartially, loyally and efficiently. If it fails to do this it might jeopardize government reputation and this can spark off crisis. In other words, once "a policy is determined, it is the unquestionable and unquestioned business of the public servant to strive to carry out that policy precisely ... whether he agrees or not Oluabenga (2015:11).

(iii) Protecting public interest and public conscience. The public servant employed in the local government has the duty to protect public interest. That is why the Head of personnel management and the treasurer to

the Local Government are signatories to local government account and the HPM are the only officers who can bind the Local Government in contract. Permanent Secretary in State and Federal Ministries are for similar reasons protectors of public interest and public conscience in their ministries.

(iv) Advising government on full implication of policy. It uses its variety of knowledge tradition and experience and utilizes its professionalism in doing this.

(v) To ensure stability and continuity in a period of change. Unlike political office holders their appointment is tenurial. They hold office subject to good conduct until retirement. They are, therefore, there to serve any group or people or party in power.

For the public servants to realize these responsibilities successfully they must display a high degree of discipline and prudence and then are supposed to be guided and moderated by:

(i) The relevant provisions of the constitution.
(ii) The local government law.
(iii) The staff regulations.
(iv) The civil service rules.
(v) The financial memoranda and
(vi) Various circulars.

They may however be hindered from performing these enumerated functions effectively, efficiently and prudently by forces and sentiments which include:

(i) Ignorance
(ii) Corruption
(iii) Poverty
(iv) Tribalism
(v) Nepotism/clannishness
(iv) Interference from the political class.

4.4 THE LOCAL GOVERNMENT SERVICE COMMISSION See The Local Government Law (2004: Sections 56, 57, 58, 59).

One of the fallouts of the 1976 Local Government Reform was the establishment of a Local Government Board. Its duty was to recruit qualified senior staff for the Local Government System and to deploy them appropriately and to promote, discipline of erring staff and protect them against arbitrary termination of appointment. The civil service reform of 1988 went further to harmonise the condition of service of Local Government Personnel with the personnel of the State and Federal Governments.

Enugu State Local Government Law gave recognition to the Local Government Service Commission. The Commission is made up of the chairman and four other

members who shall in the opinion of the Governor of the state be persons of unquestionable integrity and sound political judgement provided that the chairman and members shall be confirmed by a resolution of the House of Assembly of the state. The Commission shall be subject to the provisions of the Local Government Law or any other enforcement, the power to appoint persons to hold or act in office in a local government (including the power to make appointments) and to dismiss and exercise disciplinary control over persons holding or acting in such offices particularly persons on grade level 07 and above.

4.4.1 The Functions of the Local Government Service Commission

See The Local Government Law (2004: 60, 61)

The Local Government Service Commission shall:

(a) Set up general and uniform guidelines for appointments, promotion and discipline;

(b) Monitor the activities of such Local Government to ensure that the guidelines are strictly and uniformly adhered to;

(c) Serve as a review body for all petitions from Local Governments in respect of appointments, promotions and discipline; and

(d) by regulation provide for –

(i) periodical returns and information to be supplied to the service commission by all Local Governments

(ii) the terms and conditions of service (including, without prejudice to the generality of that expression, the salaries and allowances, the grant of advances, the provisions of staff quarters, annual or maternity leave, medical or dental treatment) and equate them with those obtaining in respect of employees in the State Public Service;

(iii) the transfer of employees between Councils in the State;

(iv) retirement of officers.

The Local Government Law created a unified Local Government Service. "All employees of any Local Government of the state shall be persons in the Unified Local government Service of the State."

4.5 THE ADMINISTRATIVE STRUCTURE OF THE LOCAL GOVERNMENT

The administrative structure of Local Government hinges on departments and there are seven departments of Local Governments. They are:

(i) Personnel management
(ii) Finance and supplies
(iii) Works
(iv) Agriculture and Natural Resources
(v) Primary Health Care
(vi) Social services or Social Development (Adult Education, Community Development, Social Welfare, Youth and Sports)
(vii) Planning and Research.

4.6 THE SECRETARY TO THE LOCAL GOVERNMENT

See The Local Government Law, (2004: Sections 25(5)(6)(7)(8). See also FRN Model Financial Memoranda for Local Government (2009: 18 – 19)

(i) The secretary, although he is the head administration is not a staff of Local Government. The secretary to the Local Government shall be appointed by the chairman to the Local Government".

(ii) The chairman shall appoint the Secretary to the Local Government Council from either

(a) The Local Government Service Commission a staff who must not be on salary less than grade level 12 and shall be granted leave of absence from the Commission, or

(b) A graduate from the Local Government Area of not less than ten years post qualification experience.

4.6.1 The functions of the secretary to the Local Government are to:

(a) Serve as the secretary of the meetings of the Executive Committee of the Local government and keep the records thereof;

(b) Co-ordinate the activities of the Departments of the Local Government Council;

(c) Liaise on behalf of the chairman with the Local Government Council through the Leader of the Council.

(d) Liaise with the secretary to the State Government and other

necessary State functionaries on State and local government relations.

(iv) The secretary to the Local Government shall interact with the councillors through correspondence and meetings.

(v) The secretary to the Local Government shall perform such other duties as may be assigned to him from to time by the Chairman of the Local Government.

4.7 MAJOR DEPARTMENTS OF THE LOCAL GOVERNMENT AND THEIR FUNCTIONS

The major departments of the Local Government and their functions including their financial functions are contained in the Financial Memoranda. They are as hereunder stated. See FRN: Model Financial Memoranda for Local Governments (2009: 13 – 24)

It is important to emphasis the importance of Federal Republic of Nigeria model financial memoranda for Local Government. The financial memoranda according to Halidu I. Abubakar (1998:1).

> *... is a document with codified set of rules and regulations which provide detailed guidance and instructions on the*

functional, accounting and stores procedures to be followed in the administration of the financial affairs and material management of each local government in Nigeria.

4.8 DUTIES AND RESPONSIBILITIES OF THE DIRECTOR OF ADMINISTRATION AND GENERAL DUTIES

- Head of Personnel Management, General Services and Administration
- In Charge of Day-to-day running of the department
- Policy initiation and execution.
- Advising Head of Local Government Administration on policy matters.
- Chairman Junior Staff Committee
- Liaises with the Head of Local Government Administration for coordination of training activities in the Local Government.
- Department vote controller in accordance with the Revised Financial Memoranda for Local Government.
- Signs all Cheques in conjunction with the Director of Finance/Treasurer
- Any other duties that may be assigned from time to time by the council, FGPC, the Chairman and Secretary.

4.8.1 29.12 The Director of Administration and General Service shall be responsible for ensuring:

(1) That all contractual agreements, Local Purchases Order, Job Order Forms or such other documents relating to contracts, supplies, etc. are signed by him only after the appropriate approving Authority to it. But if that Authority insists, he shall raise an audit alarm.

(2) That he signs all payment vouchers in conjunction with the Treasurer with the Treasurer after scrutinizing all relevant supporting documents

(3) The existence of the supporting payroll management and recording system.

(4) That he ensures adequate data base for all staff.

4.9 DUTIES AND RESPONSIBILITIES OF THE DIRECTOR OF FINANCE/TREASURER TO THE LOCAL GOVERNMENT

The Treasurer is the Chief Accounts Officer and Head of Finance Department of the Local Government. The Treasurer as the Chief Finance Adviser to the Local Government shall be in attendance at Executive Committee meetings and other committees to provide advice concerning the financial implications of proposed policies, the State of the Local

Government's finances and financial matters generally.

4.9.1 The **Treasurer** shall:

(1) Be responsible for the administrative control of Finance Department of the Local Government;

(2) Perform duties as Chief Accounts Officer of the receipts and payment of the Local Government;

(3) Facilitate the work of the Audit Alarm Committee;

(4) Be responsible for the budgetary control and supervising the accounts of all departments of the Local Government;

(5) Be responsible for the sound administration and effective organization and working of the

4.9.2 Finance Department:

(1) Prepare and publish monthly and annual financial statements of the Local Government;

(2) Be a signatory to all Local Government cheques, vouchers; and other contractual documents

(3) Perform such other related duties as may be assigned by the Chairman;

(4) Shall be responsible for the maintenance of sound accounting and internal control systems

(5) Appends his signature on statement No 1 "Responsibility for financial statements".

(6) Custodian of security documents of the Local Government.

(7) Ensures that accounting systems as laid down in the Revised financial Memoranda for Local Government are compiled with by all the Departments and supervising the accounts for all Departments of Local Government.

4.9.3 The Treasurer will be responsible to ensure that:

(i) There is strict compliance with the Financial Memoranda in the Finance and other Department of the Local Government;

(ii) The accounting system as laid down in the Financial Memoranda is complied with by all the Departments of the Local Government;

(iii) All instructions relating to expenditure of public funds by the Accounting Office are in writing;

(iv) All Accounting Officers are made to understand that they are responsible to account to the Public Account Committee for all monies voted for each Local Government;

(v) All accounts and other records prescribed by this Financial Memoranda to be kept by the Treasurer, Finance and other departments of the Local Government are properly maintained and kept up-to-date;

(vi) All revenues due are collected promptly and paid into Local Government Funds;

(vii) An accurate account is kept of all monies received and disbursed;

(viii) All advances are recovered in accordance with the conditions under which they were granted

(ix) No payment are made unless properly authorised and funds are available;

(x) A monthly check of the treasury Cash Book transaction is carried out by an authorised person other than the cashier and a monthly bank

reconciliation statement is prepared;

(xi) Safeguard, including the arrangements of duties on sound internal check principles, are laid down for protection against fraud, embezzlement or irregularity;

(xii) All possible steps are taken to prevent waste of the Local Government's funds or other resources;

(xiii) Proper provision exists for the safe custody of the Local Government's cash and other securities, revenue earning books, stores and other physical assets;

(xiv) Department Accounting Systems are satisfactory and Departmental Accounts and other subsidiary accounts are reconciled monthly with the treasury records;

(xv) The Annual Estimates, annual accounts and all other financial returns and statement required by this Financial Memoranda, the Governor's Office, the Council and the Executive Committee's (including those referred to in

Financial Memoranda 1.5) are correct and are submitted on the due dates in the prescribed manner;

(xvi) All claims for government grants are correctly prepared and submitted on the dates;

(xvii) The accounts all revenue collectors are checked as often as possible, and in any case at least once a month. The dates on which the accounts are checked will be recorded on the Revenue Collectors Chart maintained by the Treasury showing the names of all the revenue collectors.

(xviii) Queries from the Auditor-General or Internal Auditor are promptly acknowledged. A register of Audit correspondence shall be kept, indicating how queries have been dealt with, all those which are still outstanding. The register of Audit correspondence must be placed once each month before the Committee;

(xix) All accounts books, records, vouchers, cash, securities and stores are produced for inspection, check or audit as and when required by

authorised persons; and

(xx) All financial directives of the Local Government, Executive Committee or the Chairman to the Local Government are promptly carried out.

4.9.4 The Treasurer shall prepare reports on the following matters and submit them at the appropriate time through the Secretary to the Executive committee:

(1) The financial implications, year by year on recurrent capital account, of the projects included in the draft Development Plan of the Local Government.

(2) The general financial implications and the effect on the Local Government's finance of the annual estimate proposals of Departments;

(3) The general financial implications and the effect on the Local Government's finances of applications for supplementary estimate or proposed re – allocations funds from one sub – head to another;

(4) A monthly report on the estimated

'Cash Flow' situation of the Local Government showing probable receipts and estimate payments for each month of the following three months and the cash position at the end of each these months;

(5) Arising from (4) above information for the investment on a short term basis or any funds not immediately required for the day–to–day operations of the Local Government;

(6) The financial implications of proposals formulated by the Local Government Council, the Executive Committee or a Department of the Local Government;

(7) The financial implications of the alternative causes of action, etc. a large central markets as compared with building two or three small ones in different locations in the Local Government Area;

(8) The financial implications of any proposals to charge the present levels of rates, taxes, license fees or charges;

(9) Any indications that a Department of the Local Government has

incurred wasteful or extravagant expenditures;

(10) Any indication that the revenue under any head is likely to fall short of the amount included in the approved annual estimate;

(11) Where a revenue collector has failed to collect monies due, or to pay collection promptly to the Treasury or the Bank Accounts of the Local Government, or to produce monies in his hands according to his Cashbook;

(12) An appraisal of the monthly and end of the year statements to financial situation of the Local Government;

(13) Fraud or misappropriation of funds; and

(14) The Auditor – General's report on the financial accounts of the Local Government for a financial year;

(15) Keep a comprehensive record of the Local Government assets and update it monthly;

(16) Bank reconciliation statements in respect of all accounts maintained with banks;

(17) Fixed Asset Verification Report;

(18) Physical stock count report;

(19) Append his signature on statement number 1 "Responsibility for financial statements";

(20) Prepares Budget variance report;

(21) Ensure that all accounting staff are trained on emerging issues on accounting and finance.

The Treasurer may delegate the actual performance of any of his duties and responsibilities to his subordinate staff, but such a delegation shall not absolve him from responsibility for ensuring that the duties have been properly performed.

The Treasurer and/or other Accounts Officers will be held personally and peculiarly responsible for losses arising from inaccurate accounting records, failure to take adequate precaution to safeguard cash, stores and receipt book, as the result of unauthorised or incorrect payments or as the result of carelessness or neglect in the performance of their duties.

The Treasurer must not be the Cashier in the Treasury.

4.10 DIRECTOR OF AGRICULTURE AND NATURAL RESOURCES DEPARTMENT

DUTIES

(1) Taking charge of the Department

(2) Monitoring the implementation of all Agricultural Department Programme in Local Government Area.

(3) Advising the Local Government on matters relating Agricultural Policies and Programmes.

(4) Departmental vote controller.

4.11 DIRECTOR OF BUDGET, PLANNING, RESEARCH AND STATISTICS DEPARTMENT DUTIES

(1) Coordinating the activities of the Department.

(2) Advising the Local Government on matters relating to Budget National (rolling)

(3) Planning and data collection.

(4) Departmental vote Controller.

(5) Responsible for Budgetary control.

4.12 DIRECTOR/COORDINATOR PRIMARY HEALTH CARE DEPARTMENT, COORDINATOR, PRIMARY HEALTH CARE CADRE

Duties:

(1) Shall be the Head of the Primary Health Care Department of the Local Government.

(2) Coordinates all Primary Health Care activities in the Local Government Area.
(3) Supervises all areas involved in the provisions of Primary Health Care at the Local Government
(4) Shall be the Chief Health Adviser to the Local Government
(5) Ensure that Primary Health Care activities as laid down in the plan are complied with, publishes monthly and annual health statements of the Local Government
(6) Laisses with other agencies, and Non – Governmental Organisations on issues relating to health in the Local Government.
(7) Departmental vote Controller.
(8) Performs such other related duties as may be assigned.

4.13 DIRECTOR, SOCIAL DEPARTMENT, EDUCATION, INFORMATION, SPORTS AND CULTURE DEPARTMENT

Duties:

(1) Coordinating the activities of the Department
(2) Advising the Local Government on social
(3) welfare and Community Development Policies and Programmes.
(4) Departmental vote Controller.

4.14 DIRECTOR, WORKS, TRANSPORT, HOUSING, LANDS AND SURVEY DEPARTMENTS

Duties:

(1) Coordinating the activities of the Local Government

(2) Advising the Local Government on Works, Transport, Housing and survey matters.

(3) Departmental vote Controller

4.15 DUTIES AND RESPONSIBILITIES OF HEADS OF DEPARTMENT

The officer designated as Heads of Department of a Local Government under section of the law shall be responsible for ensuring that:

(i) There is satisfactory overall control of the finances of his Department

(ii) The duties and the responsibilities of the Departmental Officer controlling the vote and persons with authority to incur expenditure as set out in Financial Memoranda chapter 13, are properly discharged.

(iii) There is strict compliance with the provisions of the Financial Memoranda through his Department.

(iv) Accurate records as prescribed in Financial Memoranda Chapter 38,

are kept of all Local Government physical assets in use in the Department and suitable arrangements are in force for safeguarding these assets.

(v) All accounting books, accounting records and vouchers kept in the Department are produced for inspection, check or audit as and when required by authorised person.

(vi) The departmental accounts are sent to the Finance Department monthly for reconciliation with the treasury accounts

(vii) Queries from the Auditor General or the Internal Auditor concerning financial transactions or accounting or financial systems in the Department are dealt with properly.

(viii) All departmental financial information called for by the Chairman, Secretary or the Treasurer is promptly made available.

(ix) All commitments and liabilities are recorded immediately they are incurred in the Departmental Vote Expenditure Account and that:

The payments and expenditure control arrangements are set out in Financial Memoranda, Chapter 13 and 14

are faithfully followed ; and

(a) Adequate provision is retained to meet all outstanding liabilities.

(b) Where the Head of a Department is the Officer controlling a vote, he shall have the responsibilities as in Financial Memoranda Chapter 13.

4.16 Duties and Responsibilities of Revenue Officers

All revenue Officers in the Local Government are under the Treasurer. They shall ensure the collection of revenue and shall continue to account for them and render returns to the Local Government Treasurer in accordance with these Finance Memoranda and other existing Financial Regulation.

4.17 Duties and Responsibilities of Revenue Collector

It is the duty of a Revenue Collector:

(i) To keep such books of account and other records prescribed by these Financial Memoranda and the Treasurer as are needed to ensure that all revenue and other monies

due to the Local Government and for which is responsible, are collected in full;

(ii) To collect promptly all sums due to the Local Government;

(iii) To report to his immediate supervisor any instances of default in payment of any sums due to the Local Government;

(iv) To issue, immediately on payment, receipt or licences in the prescribed form for all payments made to him;

(v) To record, in a Revenue Collector's Cash Book, details of all receipts of revenue and the payment of such revenue collections to the Treasury or a Bank;

(vi) (Pending the payment to the Treasury or a Bank, to safeguard all revenue collected by placing in the safe or cash tank provided by the Local Government;

(vii) To keep all his revenue earning books under and key when not in use;

(viii) To pay all revenue collected to the Treasury or Bank at intervals prescribed by the Local Government;

(ix) When required to do so, to present all

his revenue earning books, account books and cash to the person responsible for checking his accounts;

(x) To submit used, partly used and unused revenue earning books, licence books and relevant documents to the Treasury once a month or at such lesser intervals as may be prescribed, whether or not there have been any collections or payment to Treasury; and to return all exhausted revenue earning books to the official from whom they were received.

CHAPTER FIVE

THE RELATIONSHIP BETWEEN THE STAFF OF LOCAL GOVERNMENTS AND POLITICAL OFFICE HOLDERS

The principles guiding Career Public Service in the Local Government service and the influence of bureaucracy on the service was extensively discussed at Chapter Four.

In the words of David M Cohen (1996: 6), some of the points we raised could be rehashed thus; "Career employees work under "merit system" rule, through which vacancies are filled by competitive procedures. Formal qualifications–including educational requirements and both general and specialised work

experience are established for every position and grade". The norms, rules, regulations, tradition etc, that characterise the Career Public Servant may not always be found among many political office holders. A political office holder may be highly educated, with rich work experience that may not be in the public service, highly innovative, highly entrepreneurial, but the question remains, how did and why did he enter? The answer according to Cohen still is largely to assure political accountability by whoever appointed him. It is to reward supporters who helped in making the victory of the boss possible.

To be appointed Cohen continued, invariably you must have been an active supporter in his campaign, a major financial contributor, or an old family friend and these last qualifications are less important if you have a powerful patron who fits one of these categories or whom the President (Governor, Chairman of the Local Government) wants to please.

From the analyses so far, it is crystal clear that the political appointee and the Career Servant are in many dimensions diametrically opposed to each other.

Their orientations are different and in discharging their responsibilities and duties the two segments of the public service do not always agree. Although the

relationship they share is that of the proverbial "Cat and Mouse", the truth is that in spite of their difference, the two segments of the service jointly constitute public administration. Earlier writers on public administration had drawn a sharp line between administration and politics but quickly realised that none of the segments can achieve the purpose of public administration without the other. W. Wilson (1887: Vol 2) quoted in Adebayo (1992: 68) was one of such earlier writers who once categorically declared that "administrative questions are not political questions" but also asserted that, "although politics sets the task for administration, it should not be suffered to manipulate its offices".

John Pfiffner (1935) also in Adebayo (1992: 68) bought Wilson's point of view and also advised that "politics should stick to its policy – determining sphere and leave administration to apply its own technical processes free from blight of political meddling". The division between policy and administration which these writers are advocating according to Adebayo (1992: 72) "is to ensure that, one should not encroach upon the other in a meddlesome manner." Adeboye however noted that "in a considerable number of instances questions of policy will be closely intermingled with administrative action". He categorically proffered the inevitability of the

intermingling, interrelationship and interfacing of the questions of policy and questions of administration with this strong assertion that: Public administration embraces both politics and administration itself and that there is the concept of public administration as a process and the concept of public administration as politics and they are two sides of the same coin. He called for recognition of this fact which makes it easy to appreciate that the application of each leads, naturally to the application of the other.

5.1 THE POLITICAL HEAD AND THE PUBLIC SERVANT

Local governments in Britain had a similar experience of issues of meddlesomeness and conflict of roles. A committee was set up to study the problem and proffer solutions. The report of the committee known as Maude report stated:

> *That the lack of clear recognition of what can and should be done by officers, and of what should be reserved for decision by members lies at the root of difficulties in the internal organization of local authorities.*

A solution was sought for this problem by sharing or

dividing their responsibilities to ensure that non encroaches on the other in a meddlesome way. It is gratifying that the local government law 2004 addressed this problem. The law recognizes that the responsibility for policy rests with the political class and that career public servants are the instrument through which policy is carried out. For instance, in the relationship between a Supervisor and the Head of Department as stipulated by Section 26(1)(2), (a)(b) of the local government law each Head of Department shall:

(a) In matters of policy, be subject to the general direction of a supervisor; and

(b) In matters relating to the employees and the internal control of the department, be under the general direction and control of the Head of Personnel Management of the local government who shall be appointed by the Service Commission.

Another incidence of such division of functions between the political class and public servant is in section 35(3) and (4). This section empowers the chairman to appoint, discipline and control staff on grade levels 01 to 06, but he has to exercise these powers through the Junior Staff Management Committee (JSMC) which is constituted by career officers.

The career public servant must therefore, at all times accept that it is the responsibility of the political class to define, dictate and decide policy. The political class is politically superior to the career public servant, and it is the prerogative of the class to show the way. The political master had a perspective of how he wants the society to be organized. He took the risk, contested and won an election under a manifesto, and has a duty to translate his ideas to concrete realities. The public servant on the other hand is oriented to assist the political master in the formulation and execution of policy chosen by the political master. According to Adebayo (1992 :116)

> *The civil service possesses the machinery, the repository of knowledge stored in files and in their memory, the institutional discipline and hierarchical command to formulate and tender advice on various options and alternatives of policy open to government. The civil servant will outline the various options, examine each one for advantages and disadvantages in terms of cost, time factor and political acceptability. It is for the policy maker to choose and decide.*

However, although the political master is politically superior, a disciplined and realistic political master would know or ought to know when his political superiority is spent. He will know or ought to know that his right ends where the right of others begins. He will be able to differentiate between power and authority. He will know or ought to know according to Nwankwo: (1999:35) for instance that:

> *The superiority of the political class does not extend to insisting that works on the road go on without drawings; that payment be made without certificate and field inspection reports or that shoddy work be over looked by a qualified engineer.*

To reduce public servants to mere robots, doing nothing but malingering and gossiping is not only frustrating but very inimical to the growth of an efficient public service. We must listen to the cautionary remarks of Augustus Adebayo (1992:70) According to him:

> *If we are going to have an efficient and effective public service in this country, the policy makers must allow the service to play the role assigned to them in public*

administration.

Experience has also shown that the bureaucratic structure of local governments with its attendant implications of slow and sluggish adherence to procedural rules is one of the factors that generate conflicts between the political master and the public servant. The Weberian description of bureaucracy with emphasis upon hierarchy, formalism, routinisation and efficiency may be a clog on the rate of speed with which the political master prefers to use in achieving his objectives. That is the dilemma of the career public servant. He defines discipline often as conformance with rules and regulations but when there is strict adherence to rules, procedure originally conceived, as means becomes an end in itself. In which "an instrumental value becomes a terminal value". The political master may not be comfortable with this ritualism or technicism; the displacement of the purposes or objectives of the local government with procedural rules. The political master may want a style of administration that is more politically responsive, creative, flexible, innovative and speedy in planning and actions, and less of the cautious, methodical, prudent and disciplined approach of the bureaucrat.

Career public servant's attention is drawn to Fredrick Moshers (1978:375) assertion to the effect that:

> *Government has ceased to be merely the keeper of the peace: the arbiter of disputes and the provider of common and mundane services. For better or for worse government has directly and indirectly become a principal innovator, a major determiner of social and economic priorities, the guide as well as the guardian of social values, the capitalist and entrepreneur or subsidized and guarantor of most new enterprises of greater scale.*

By the provision of the fundamental objectives and directive principles of State policy (Chapter2) of the 1999 Constitution (as amended) is a government, is no longer restricted to mere maintenance of law and order. It now takes part in all aspects of human development and welfare. The dilemma of the career public servant and infact the dilemma of the entire society is the truism that bureaucracy may be an agent of slowness, sluggishness and ritualism in policy making and execution. It however provides stability and continuity and cannot be wished away easily. It provides for certainty, uniformity and predictability. The Federal Military Government in the era of General Ibrahim Babangida sought to solve this problem of

bureaucratic bottleneck in 1988, by engaging in reforms that sought to among other reasons at reducing the bureaucratic rigidities in the old system and in inspiring loyalty of the civil service, particularly the top level management. Consequently some top level career posts were politicized. The post of permanent secretary was abolished and a Director General, a political appointee took his position. The Civil Service was relegated to the background. This system was practiced for a few years and there were cracks everywhere in the structures of Government. The Federal Government quickly set up another panel called Ayida Panel to review the Civil Service. Among the important findings of Ayida Panel were the existence of the following phenomenon in the Civil Service as reported by the Source Magazine Vol. 1 No. 20 (August 25 1997:13).

(i) Politicization of the civil service, especially at the top level.

(ii) Breakdown of discipline

(iii) Disregard for financial accountability

(iv) Prevalence and virtual institutionalization of corruption at all levels of service.

(v) Scant regard for the rules, regulations and procedure resulting in arbitrary decisions and general loss of direction.

Ayida report led to the reorganization of the civil

service. Decree 43 which husbanded the reform was immediately abrogated and the civil service was restored to its pre-decree 43 status. The solution in moderating the conflict between the political master and the public servant is infusion of the spirit of cooperation in their relationship as administration will ever remain the "handmaid of policy." C. Beard's (1941), postulation in Adebayo (1992:2) would ever remain relevant. He said that:

> *The future of civilized government, and even of civilization itself, rests upon our ability to develop a science and a philosophy and practice of administration competent to discharge the public functions of civilized society.*

There is no doubt that generally, the public service in Nigeria is associated with certain afflictions including corruption, nepotism, lethargy and slowness in taking and implementing decisions, absenteeism, insensitivity to yearnings of the people, wasteful spending of resources, inadequately trained personnel, insubordination and lack of regard to official hierarchy, poor record keeping, violation of oath of office and oath of secrecy etc, a political appointee with a raging desire to pursue and attain his main objectives, in the face of limited time and sense of urgency could be frustrated by these litany of ills and could become

distrustful of the career staff. He may as Cohen (1996: 27) remarked, “buy into the common stereotype of government “bureaucrats” as: uncreative paper pushers and lazy free loaders who hide behind “red tape” and who only obfuscate and delay”.

The summary of our postulation is that the goal of the political office holder is often at variance with the goal of the career public servant. While the career staff may be striving to ensure stability by adherence to rules, fidelity to procedure and tradition, efficiency and effectiveness in the application and utilisation of government resources to ensure quality service delivery, the political office holder may be propelled by expediency, partisanship, ethnic sentiment and even personal gain. Sometimes, their goals, *Walls A.J* (2011: V 4, 2) observed, or the end they pursue are in tandem but the road to the attainment of the goal; the means are different and conflicting and in this situation the parties attempt to frustrate the attainment of other's goals. This may result to what *Diez et al* (2006: 563 – 593) called the “incompatibility of subject positions”. It is enough to say that conflict is disruptive. The extensive discussion on this matter of relationship between the political appointee and the

career public servant is to emphasis the enormity of the problem it poses to leaders in the public service – the Governor, Chairman of Local Government and even the President. It is a problem that must occur or experienced. The solution lies in the leader being conscious of what he wants to achieve in government and having a firm understanding that the bulk stops in his door because he takes the praise, he takes the blame.

Most importantly let the political appointee appreciate the critical importance of respecting the chain of command that is part of the bureaucratic civil service and local government structure. When a boss is repeatedly by-passed by the political appointee and information are sort for and obtained and instructions are given to subordinate staff, the danger of organisation indiscipline, frustration and low morale might be envisaged. To ameliorate the conflict, the Chairman must not only be a leader but also a motivator, a listener, a mentor. He must be accessible to both sides, he must himself understand the rules and demonstrate preparedness to follow the rules, he must have a kin sense of justice and the courage to address any issue with demonstrable impartiality and neutrality devoid of beclouding sentiments and give due regards to the flourishing of the rule of law.

CHAPTER SIX

FINANCIAL ADMINISTRATION IN THE LOCAL GOVERNMENT SYSTEM

This chapter does not guarantee a total and comprehensive knowledge of what one is supposed to know about financial administration in the Local Government system. It can only nudge a person or sensitise one to the need to know in order not to be entrapped into a regrettable situation, especially at a time one had done his bit, did his best and had retired to the comfort of his home, after serving his people.

Our highlights in this Chapter is on the rules, laws, regulations and structures that matter for the key understanding of what must be done to ensure

accountability, transparency and good governance. Although, the Chairman of the Local Government is the Chief Executive and Chief Accounting Officer of the Local Government, financial responsibilities and duties are not exclusive to him. Many key officials are assigned certain degrees of financial responsibilities and duties and therefore, it is the collective responsibility of all those involved to ensure that all hands are on deck to run the administration in an accountable and transparent manner.

At chapter four of this work we had the financial responsibilities and duties of the key functionaries in the Administrative Structure. They were identified and there may be no need mentioning them in this chapter. They along with the functionaries mentioned in this chapter are individually and collectively responsible for the financial and fiscal health of the Local Government. The role of the other structures, institutions or organisations in ensuring an accountable and transparent financial administration in the Local Government System is also discussed.

6.1 FINANCIAL DUTIES AND RESPONSIBILITIES OF KEY LOCAL GOVERNMENT OFFICIALS: THE LEGISLATIVE COUNCIL, THE EXECUTIVE COMMITTEE, THE CHAIRMAN, AND THE SECRETARY TO THE LOCAL GOVERNMENT

See FRN Model Financial Memoranda for Local

Government, (2009: 13 – 18). It is important that:

1. The duties and financial responsibilities of the Key Local Government Functionaries are produced verbatim as contained in the Financial Memoranda. We did this for ease of reference and to easily avail to local government officials this important rules and regulations.

Financial management is not the exclusive concern of any one part of the organisation of a Local Government or of any one person or category of persons.

The Local Government Council, the Chairman, the Executive Committee and all members of the Local Government Staff from the highest to the lowest, are involved in Financial Affairs and should, in particular, be concerned in ensuring that within their field of operations and responsibility, proper value is obtained for money spent. However, the Local Government Council, the Chairman, the Executive Committee, and certain categories of Officers do have special responsibilities for financial matters and these are set out in this Chapter of the Financial Memoranda.

6.2 Duties of the Local Government Council

The Local Government Council being the Legislative arm of the Local Government shall be responsible for the following functions:

(1) Law-making, debating and passing

Local Government Legislation

(2) Debating, approving and possibly amending Local Government annual budget, subject to the Chairman's veto which could be over-ridden by a two thirds majority of the Council;

(3) Monitoring the implementation of projects and programmes in the Local Government annual budgets;

(4) That there is compliance with the provisions of the Financial Memoranda;

(5) The financial directions under the law and any other financial instructions issued by the Governor are strictly observed;

(6) To consider reports received from the Auditor-General and take any action required arising from such report;

(7) Advertising, considering and liaising with the local government Chairman who is the Head of the Executive Arm of the Local Government; and

(8) Perform 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;

(9) Legislating on possible new policies that might affect the accounting and

internal control systems of Local Government Councils

The Local Government Council discharges its responsibilities under the Financial Memorandum 1.1. through its own Finance and Budget Committee to which it will issue instructions regarding the reports and other information it possesses in collection and disbursement of funds; in support of any recommendation to make by – laws, to levy a tax or a rate or to borrow money; and regarding the general financial management of the affairs of the Local Government.

The Local Government Council will ensure that the Executive Committee is responsible for the management and control of finances of the Local Government; within these general responsibilities, under the law and these Financial Memoranda.

6.3 Duties of the Executive Committee

Finance and General Purpose Committee see Section 41(1) of Local Government Law 2004

The Finance and General Purposes Committee shall be responsible for:

(1) To make such recommendations as it considers necessary to the Local Government concerning the policy to be followed by committee and

departments in the framing of estimate proposals for next financial year.

(2) To receive and consider the annual estimate proposals of all departments as collated by the Treasurer, and to direct the Treasurer in preparation of the draft of the annual estimate of revenue and expenditure of the Local Government;

(3) To accept or amend the draft estimate submitted by the Treasurer and to submit the agreed draft annual estimate for the consideration of the Legislative Council;

(4) To examine proposals and to submit recommendations to the Local Government Council, as and when necessary, in regard to:

(i) The amendment of revenue-earning by-laws or rules of the promulgation of new by-laws or rules providing for the raising of revenue

(ii) The level of a local tax or rate, to be levied

(iii) The raising of a loan

(iv) The manner in which

investment should be made

(5) To examine all applications for supplementary estimate or the re-allocation of funds and as may be appropriate, approve or recommend them. Or otherwise, to the Legislative Council

(6) To consider and award contracts in accordance with the relevant Standing Orders and as prescribed in these Financial Memoranda or Procurement Act

(7) To make necessary disciplinary action against any officer who have been found negligent to the performance of his duties

(8) To report to the Legislative Council any case where, in its opinion, a Local Government Officer has been negligent in the performance of his financial duties

(9) To carry out such test checks and other checks as are necessary to satisfy itself that the Local Government Revenues are being promptly collected and accounted and its funds properly disbursed

(10) To examine and where necessary, take decisions or submit recommendations to the Legislative Council

on matters arising from the statements and reports referred to it under Financial Memorandum 1.5

(11) To exercise general supervision over the financial management of the affairs of the Local Government including the collection of revenue and the disbursement of funds

(12) To in particular, ensure:

(a) That all revenues are promptly collected and brought to account

(b) That all expenditure properly authorised has satisfactorily achieved the purpose for which it is intended

(c) That adequate safeguard exist for custody of funds, stores and other assets of the Local Government.

(d) That Boards of Survey or Boards of Enquiry are appointed to monitor:

(i) Cash on hand, in accordance with the provision of

Financial Memorandum 5:17

(ii) Revenue-Earning Books, in accordance with the provision of the Financial Memorandum 7:15

(ii) Losses of funds in accordance with the provision of the Financial memorandum 8:6

(v) Stores in accordance with the provision of the Financial Memorandum 34:25

(vi) Bonds of Local Government Officials, where appropriate in accordance with the provision of the Financial Memorandum 42:3

(e) That, where applicable, all staff whose duties involved the handling of funds of the Local Government are adequately bonded

(f) That appropriate disciplinary action is taken against any individual held personally responsible for losses of funds, or stores for making improper or unauthorized expenditure, for failing

to collect revenues for which he is responsible or in any other way failing to discharge properly his financial duties

(g) That all contract agreement include a clause enabling the Auditor-General for Local Government have access to site for purpose of auditing or monitoring contract performance.

(h) To ensure that the accounting system is strong and can capture adequately the financial transactions of the local government council.

(i) To ensure that the internal control system is adequate and can ensure the attainment of the objectives for which the local government council are set.

The Chairman of the Local Government is the Chairman of the Finance and General

The Executive Committee will meet at least once a week to consider any matters referred to it and, each month will examine the following statements and report which the Committee will require to be laid before it.

(1) The monthly reconciliation of accounts showing the position at the end of the previous month;

(2) The bank reconciliation statement as at the end of the previous month;

(3) The Revenue Collector's Chart;

(4) A report on the checking of the accounts of revenue Collectors and any irregularities in regard thereto;

(5) A report on the checking of revenue earning books;

(6) A report on the Cash flow situation showing probable receipts and estimated payments for each month of the following three months;

(7) A statement showing progress in the collection of revenue under the various main Heads as compared with the estimated amounts;

(8) The Personal and other Advances Ledgers and the Deposit Ledgers showing the up-to-date position of each individual account;

(9) Any application to incur supplementary expenditure

(10) Reports by the Treasurer on any of the matters referred to in Financial Memorandum 1:14, or failure to reconcile Departmental records with those of the Treasury;

(11) The Registrar of Audit Correspondence

and a statement showing progress made in dealing with any outstanding matters raised by the Auditor-General;

(12) Reconciliation of individual advance ledgers with the relevant control accounts in the general ledger;
(13) Stock verification report
(14) Fixed assets verification report
(15 The internal audit report
(16) Salaries and wages payment Report
(17) Pension Report
(18) Budget performance Report
(18) Ensuring that finance staff are very current on emerging issues in accounting and finance
(19) Preparing variance report;
(20) Ensuring that finance staff are computer literate
(21) Encouraging a gradual change from manual accounting system to computerised system
(22) Encourage the implementation of the financial manuals

The Executive Committee will each year hold such special meetings as may be necessary for the consideration of annual estimate meeting proposals of

Department and the preparation draft annual estimates to be submitted for approval by the Local Government Council.

When the Executive Committee is considering annual estimate proposals of Departments and the draft annual estimates, proposals and the draft annual estimates it should as far as possible, not become involved in matters of policy which are the responsibilities of the Departments as laid down by Council. The Executive Committee should focus its attention on the broad allocation of funds to various Departments and seek to ensure that estimate proposals reflect a proper financial economy in achieving Local Government objectives and contain no wasteful or excessive expenditure. However, in regard to financial matters, the Council is the watch dog of the Local Government and it may be properly inquire into proposal made by the Executive Committee and call for reports if it suspects such things as waste or over spending.

6.4 Duties and Responsibilities of the Finance Department

The finance Department will be responsible for:

(1) The care and custody of the Local Government Finance whether in cash or held in the Local Government Bank

Account;

(2) Seeing that all revenue due to the Local Government is collected promptly and properly paid into the Local Government funds;

(3) Making all payments out of the Local Government funds and ensuring that such payments are properly authorised and relate to duties entrusted to the Local Government;

(4) Participating in the preparation of the Local Government estimate and development plans in the form and manner prescribed;

(5) Keeping the prescribed accounts and records of Local Government financial Transactions up to date at all times;

(6) Exercising control over the account and financial records kept by other Departments or Officials, and seeing that such accounts and records are submitted to the finance Departments for checking and reconciliation at the prescribed times;

(7) Preparing all financial returns as and when they are required, so that they can be submitted promptly on dates they are due;

(8) Keeping and storing all accounts and records in an orderly manner, and ensuring that they are readily available to the Auditor-General, Internal Auditor and any other persons authorised to inspect such accounts and records;

(9) Dealing with queries arising from inspections or audits, and keeping records of such queries showing how they were cleared;

(10) Dealing properly with all correspondence concerning the financial transactions and financial affairs of the Local Government

(11) Evolving and maintaining an effective accounting system;

(12) Ensuring that internal control system is adequate;

(13) Ensuring that bank reconciliation statements are prepared as and when due;

(14) Maintaining the stock ledger;

(15) Preparing relevant schedules for the auditors;

(16) Reconciliation of subsidiary ledgers with the relevant control accounts in the general ledger;

(17) Maintaining the fixed asset register;

(18) Conducting continuous and end of the year stock taking.

Where two or more Local Governments have established a joint Board under section... of the law, the finance Department of one of the constituents Local Government may be required to administer the forms of the joint Board. In such a case, all forms, estimates, accounts and records of the joint Board must be kept entirely separate from those the Local Government.

6.5 Duties and Responsibilities of the Chairman

The Chairman of a Local Government shall be the Chief Executive and Accounting Officer of the Local Government, provided his role as accounting Officer shall exclude signing vouchers and cheques.

He shall perform the following functions:

(1) He shall preside over the meetings of the Executive Committee.

(2) He shall submit a report to the Local Government Council on the proceedings of the Executive Committee as may be required by the Council.

(3) He shall ensure strict compliance with the provisions of the Financial Memoranda throughout the Local

Government Organisation.

(4) He shall observe and comply fully with checks and balances spelt out in the existing guidelines and Financial Regulations governing receipt and disbursement of public funds and other assets entrusted to his care and shall be liable for any bridge thereof.

(5) The Chairman as Chief Executive and Accounting Officer shall face periodic checks in order to ensure full adherence to the Finance (Control and Management) Act of 1958 and all the amendments. To this end;

(a) All instruction relating to expenditure of public funds by the Accounting Officer shall be in writing.

(b) The Accounting Officer shall be responsible to account to the Public Accounts Committee for all monies voted for each Department and shall be peculiarly liable.

(c) The Chairman as Chief Executive and Accounting Officer shall render Annual Reports of his Local Government in other to ensure

accountability and enforce the performance ethic.

(d) The Chairman as Accounting officer shall be bound by the provisions of any other rules, regulations, guidelines and laws governing the roles and functions of a Chief Executive and Accounting Officer.

(6) In consultation with the Secretary to Local Government and the supervisors, the Chairman shall set the target which each employee in the Local Government shall aim at, even in routine matters. In setting target, for Local Government Employees, the Chief Executive shall first take into account the relevant Local policies, the development plan and annual budgets.

(7) He shall ensure that audit queries addressed to him are answered within the time limit stipulated in the Financial Memorandum 39:3. Where the query concerns him, it shall be answered promptly by him in person.

(8) As the Accounting Officers, the Chairman

shall have sole responsibility for the organisation of financial/accounting function in the Local Government. However, he shall delegate to the Treasurer the day-to-day operation of the function in consultation with the secretary.

(9) It shall be the duty of the Accounting Officer of the Local Government to establish and maintain an Internal Audit to provide a complete and continuous audit of the accounts and records of revenue, expenditure, plant allocated and unallocated stores.

(10) He shall ensure that the recommendations of the Internal Auditor, whether in respect of losses, waste or the improvement of system or procedures taken thereon including, if necessary reference to the Council for its decision or direction.

(11) He shall ensure that any directions issued by the Local Government Council or the Governor's office concerning any aspect of the

financial management of the Local Government, or any decisions of the Auditor-General in regard to matters of disallowance and surcharge are properly and promptly implemented.

(12) At the beginning of each Financial Year, the Chief Executive and Accounting Officer shall submit to the Executive Committee, the list (by name and the Department) of each Head of Department in the Local Government who may exercise authority to approve expenditure within the limits referred to in Financial Memorandum…

(13) At the expiration of his term of office or whenever he is leaving office for any reason whatsoever, the Chairman shall prepare a comprehensive handing-over note for his successor.

(14) Ensure the maintenance of strong accounting and internal control systems.

(15) Appends his signature on "statement number I: "Responsibility for financial statements".

(16) Ensure the practice of good corporate

governance.

(17) Evolve on continuous basis effective risk practice.

6.6 Duties and the Responsibilities of the Secretary

The Secretary is the Chief Administrator of the Executive Arm of the Local Government. He shall coordinate activities of the Local Government and keep proper records. The Secretary shall responsible for ensuring:

1) That the procedure in the Local Government Organisation is such that whenever the Local Government Executive Committee or any of its Sub-Committees takes a policy decision, it does so in the knowledge of the financial implications thereof.

(2) That in his capacity as Secretary to the Executive Committee, the committee receives all necessary reports, information, returns and data to enable it discharge promptly and in a satisfactory manner the responsibility under section… of the Local Government Law for the "regulation and control of the finances of the Local Government".

(3) That, as when necessary, the attention of the Chairman is drawn to:

(I) The need to amend practices and procedures anywhere in the Local Government organisation which

results in waste or extravagance in the discharge of the function of the Local Government;

6.7 THE ROLE OF THE OFFICE OF THE AUDITOR GENERAL

See the Local Government Law (2004: Sections 123, 124, 125, 126, 127, 128, 129, 130, 131)

(i) All Local Government Accounts that are in accordance with the requirements of the Local Government law are subject to Audit by the Auditor-General of the state.

(ii) The duty of the Auditor-General are:

(a) To disallow any item of account which is contrary to law or to Financial memoranda issued under section 119 or is unsupported by proper records or accounts, or which he considers unreasonable;

(b) To surcharge the amount of any expenditure allowed upon the person responsible for incurring or authorizing the expenditure.

(c) To surcharge any sum which has not been duly brought into

account upon the person by whom that sum ought to have been brought into account;

(d) To surcharge the account of any loss or deficiency upon any person by whose negligence or misconduct the loss or deficiency has been incurred;

(e) To certify the amount due from any person upon whom he has made a surcharge; and

(f) To certify, at the conclusion of the audit, his allowance of the account subject to any disallowance or surcharges which he may have made;

(g) Provided that no expenses incurred by a Local Government shall be disallowed by the Auditor-General, if they have been sanctioned by the Chairman of the local Government supported by two-thirds majority of the Council.

6.8 THE CONCEPT OF DUE PROCESS

It became necessary to include this concept in this

chapter because it is a concept that has been incorporated into the process of governance in Nigeria, particularly in Enugu State of which His Excellency Rt. Hon. Dr. Ifeanyi Ugwuanyi is demonstrably an apostle of the concept. The whole idea of Due Process is to ensure accountability, transparency and good governance.

Due process has been defined as "the mechanism for ensuring strict compliance with openness, competition, cost accuracy, rule and procedure that guide contract award by the government. Due process policy is an agenda to ensure and sustain an open, transparent and competitive… procurement.

The Due Process policy in contract award was introduced to ensure the selection of the most appropriate contracts to deliver construction projects as specified so that best value for money is ensured.

In the same vein Due Process in procurement "is the mechanism that focuses on ensuring that the buying or purchasing process is conducted in a fair and just manner and Procurement refers to the process of obtaining Goods and Services from external sources through competitive bidding and tendering. The buyers select the vendors who best meet their requirement ().

6.9 Highlight on Some Due Process

Requirement on Procurement and Award of Contracts, Office of the Governor (2015: 10)

(i) That it conforms with laid down guideline and reasonable prizes;

(ii) That the provisions in the procurement manual on procurement practice are followed;

(iii) That there is transparency and competition in the contract award process

(iv) That over-invoicing and inflation of procurement cost are eliminated

6.10 The benefit to be obtained if the above requirements are effectively applied include

(i) Reducing waste of government financial resources;

(ii) Releasing money realised from inflation of contracts and over-invoicing to other necessary projects or procurements to improve social condition of the citizen.

(iii) Making economic improvement of the State achievable and robust.

(iv) Reducing undue and un-necessary

fraud in the State economy

(v) Straightening and stabilizing procedure on best practices in handling government procurements.

(vi) Value for money will be achieved and that will be in conformity with international best practices.

(vii) Raising high the confidence and trust the citizen have in the State Government.

6.11 For a major procurement requiring award of contract competition must be allowed through following procedures:

(a) Advertisement for bid on the project.

(b) Ensure that applicants register their company with the necessary and relevant establishments.

(c) Receive, and secure submitted bids which should not be less than 3 (three).

(d) Ensure that the application observed the rules on taxation.

(e) Invite applicants that submitted bids and other relevant observers to be present during the bid opening.

(f) Have a professional/technical body to evaluate the bids using transparent assessment criteria.

(g) De-brief bid losers

(h) Submit report which should include assessment criteria and recommendation to the appropriate

6.12 The Role of Citizens in the Administration of Public Fund

Local government provides a forum for the participation of the people in deciding matters that affect them. Because the government is close to them, they have access to it creating opportunities for interactions between the people and their Local leaders. There is general agreement that the process of governing is most legitimate when it incorporates democratic principles such as transparency, pluralism, and citizen in decision making, representation and accountability. Civil society, the media and the private sector have roles and responsibilities in addition to those of government. This is what Carmen Malena (2004) called social accountability: an approach towards building accountability that relies on civic engagement, that is; ordinary citizens and civil society, organisations would participate directly or indirectly in exacting accountability. In the exercise of social accountability Carmen pointed out, mechanisms like "participatory budgeting, public expenditure tracking, monitoring of public service delivery, investigative journalism, public commissions and citizen's advisory board" could be used to hold public officials and public

CHAPTER SEVEN

ACCOUNTABILITY AND THE LAW

The term accountability simply means to give a reason or explanation. The new Lexicon Websters Dictionary of the English Language holds that the term accountability connotes the quality or State of being accountable and to be accountable is to be answerable; to be bound to give an explanation. Accountability in government is the requirement that government explains its actions to the people. It is a state of being liable to account to the people. It requires that rulers report to the ruled, that is that he consistently informs the people about its actions.

This principle of accountability and the responsibility of rulers is the basis of democratic practice. Democracy simply implies that sovereignty lies with the people and public office holders are mere trustees. The people or the ruled are the masters and the rulers the servants of the people. This arrangement implies a limitation on power. The Guardian (Tuesday April 1997:16) explains this succinctly when it said in an editorial that:

> *A public office is a position of service and it calls for a ready disposition to offer explanation and the humility to take instructions from the masters - The*

> *people. No one is under duress to assume public office, but once having accepted it, one has no right to pretend that one can give account of one's stewardshhip as and when it pleases one.*

A public office holder is not only expected to be accountable to the people, he or she is expected to be transparent. This requires that the decisions and actions of such office holders are open to public scrutiny and the public has the right to access government information.

Both concepts are central to the idea of democratic governance. Government transparency would be able to demostrate that all financial and public information would be placed in a way that the people would see clearly how their money and resources are spent.

The two concepts, accountability and transparency also have metaphysical or theological explanation. In its theological dimension it goes beyond being responsible to the people to include being answerable for our actions or inactions, omission or commission after our sojourn here on earth. This aspect of the term however concerns those who not only believe in the existence of God but are also God fearing. To such believers the following passage may be useful.

> *Let the evil doer still do evil, and the filthy still be filthy, and the righteous still do right and the holy still be holy. Behold I am coming soon, bringing my recompense to pay everyone for what he has done (Rev. 22:11- 12)*

The notable pronouncement of His Lordship Tobi, SSC in A. S, *Abia State v. A.G; Federation* (2006)16NWLR of 265 on duty on person in charge of Government funds not to steal from it. The Learned Justice said:

> *I should say finally that any person who is at the corridors of Local Government finances or funds or in some proximity with such finances or funds or sleeping with them and sees this judgment as a victory in the sense that he has the freedom of the air to steal from the finances or funds should think twice and quickly remind himself that the two anti-corruption bodies, the Independent Corrupt Practice Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC), are watching him very closely and will, without notice, pounce on him for incarceration after due process. But that is not as serious as God's law which says he will go to hell and we will certainly make hell. This is not a curse.*

God's law does not lie because God is not a liar.

7.1 IMPERATIVES FOR ACCOUNTABILITY AND TRANSPARENCY AS PROVIDED BY THE ENUGU STATE LOCAL GOVERNMENT LAW 2004

It is important to note that the provisions and stipulations of Local Government Law 2004 makes it imperative for local government practitioners to be accountable and transparent in the discharge of their responsibilities.

However the provisions include:

(i) **The Presidential System Option**

Embedded in this system is the principle of separation of powers and its twin principles of checks and balances. Through budgetary control mechanism that is available to the legislative council the legislature can institutionalize the principles of accountability and transparency in governance. If the council fails in doing this the explanation could only be attributed to factors like cowardice, ignorance, clannishness, selfishness, greed or sheer indifference. It is therefore to the credit of the authors of this law that the presidential option is chosen. It is indeed demanded by the new democratic polity.

(ii) **Removal of Chairman**

The process of removing the chairman from office is found in section 14(I) - 14(II) of the law.

An extensive treatment of this provision could be found in Chapter 2 of this work. The chairman could be removed from office if found guilty of gross misconduct or if he was indicted by the Auditor-General.

The vehemence to which the State government has towards cases of fraud, misappropriation, financial impropriety and recklessness or waste of public fund is reflected in the second method of removing the chairman in office. On the indictment of the chairman by the report of the Auditor General and on a motion that the report be investigated the governor of the State could suspend such a chairman from office pending the determination of his case. Our view is that a more careful, prudent and conscientious chairman will always have this cautionary provision at the back of his mind.

(iii) **The Auditor-General's Report - Sections 123, 124, 125, 126, 127, 128, 129, 130, 131 of the Local Government Law 2004**

Generally the duty of the auditor general primarily is to inquire whether money stated in the accounts have been actually spent and whether the spending was

regular. In the local Government law, the Auditor General was granted such powers to audit annually the accounts of the local government and lay the report before the Governor or the House of Assembly as the case may be. Meanwhile the law mandates the authorities of local governments to pay into the general revenue of the local governments all the revenue accruing to it and apply it to the administration, development and welfare of their area for the welfare of their people, and to keep accounts and other records about the accrued revenue in accordance with the financial memoranda. The Financial Memoranda (FM) according to Abubakar:

> *Is a document with codified set of rules and regulation which provide detailed guidance and instructions on the functional, accounting and stores procedures to be followed in the administration of the financial affairs and material management of each local government in Nigeria.*

The role of the Auditor General for Local Government in policing the finances of Local Government is extensively discussed in chapter five of this work.

The Auditor general's office is therefore a strong instrument, which the law provides for the proper

husbanding of public funds and for the purposes of accountability.

(iv) **Public Accounts Committee**

Traditionally the function of public Accounts committee according to Luce (1971) is to examine the accounts and expenditures, their economy; justness and correctness; their conformity with appropriation laws: the proper application of public money; and kindred matters:

Section 103 of the Constitution of the Federal Republic of Nigeria 1999 empowers the House of Assembly of a State to appoint a committee of its members for any special or general purpose. In all parliaments public accounts committee is one of the most important committees. Enugu State House of Assembly has such a committee. The House of Assembly could use this committee to direct an inquiry or investigation into the conduct of affair of any person, authority, ministry or government department charged or intended to be charged with the duty of or responsibility for disbursing or administering moneys appropriated or to be appropriated by such House for the purpose of enabling the House to expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated

by it. In order to achieve its purpose the House could procure evidence direct or circumstantial, summon witnesses, issue warrant to compel attendance receive evidence on oath etc see section 128 and 129 of the 1999 Constitution (as amended).

The Public Accounts Committee is therefore a serious institutional mechanism of the law for ensuring accountability and probity by local government practitioners.

(v) **Subscription to the code of conduct see Section 10 of the Local Government Law (2009)**

The law requires any person elected as the chairman to first of all declare his assets and liabilities as prescribed in the Code of Conduct Bureau and Tribunal Act before he assumes office. Councilors are also required to do the same before they take the oath of allegiance and oath of office. Staff of local governments especially those in the senior cadre are also required to observe and conform to the code of conduct under the code of conduct bureau and tribunal act. The code of conduct was originally incorporated into the Nigerian Constitution 1979 to check corruption and abuse of office. This is to ensure that those entrusted with public authority do not abuse their trust, defraud the nation or enrich themselves at the

expense of the nation. For instance the code debars any public officer from accepting property or benefit of any kind for himself or any other person on account of anything he did or did not do in discharging his duties. Nobody is also expected to offer a public officer any property or gift or benefit of any kind as an inducement or bribe because he was granted a favour by the public officer in discharging his duties. Each public officer is also expected to submit to the code of conduct bureau a written declaration of all his properties, assets, and liabilities and those of his unmarried children under the age of eighteen years at the end of every four years and at the end of his term of office. There is a code of conduct tribunal whose responsibility is to try public officers who contravened the provisions of the code of conduct and the tribunal can impose punishment ranging from vacation of seat from legislative house to disqualification from membership of the legislative house and from holding any public office or seizure and forfeiture of property to the State. By incorporating the provisions of the code of conduct in the law the authors of the law signifies that it wants a system of local government where corruption and abuse of office have no place. If the provision of the code of conduct are strictly enforced it would be difficult for public officers in the local governments to hide their illegally acquired wealth.

(vi) **Recall of Elected Councillor [see Section**

37(1)(a)(b) and (2) of the Local Government Law (2009)]

The people oriented bent of the local government law is also shown in its provision of the system of recall of representative from the council. In the past, a representative as soon as he receives the mandate of the people turns his back on them. He becomes a master rather than a servant representing nobody than himself or probably his immediate family. What ever he does; he will still go scot-free and the people cannot do anything to stop him. He cannot be removed. He can only be stopped in the next election or by an intrusion by the military. With the system of recall the people where they have the political will can now withdraw or recall their representatives in the council. Once more than one half of the registered voters in the consistency sends a petition to the chairman of the electoral commission expressing a loss of confidence in the member and within ninety days of the receipt of the petition a simple majority of those who registered to vote in that constituency approves in a referendum organized by the commission that the representatives goes. Although recall as a weapon has not been used in the recent past its existence is a continuous reminder that sovereignty lies with the people. That it has not been used does not mean that it will not or that it cannot be used. The existence serves as a warning to all legislators, they are under the scrutinising eyes of the

people.

(vii) **Accountability of Employees**

Section 66(1) seem to be specifically directed towards employees of local governments. It requires employees or those who have left the service to within three months they left the office make out and deliver to the local government a true account in writing of all monies and property committed to this charge. It is an offence punishable on conviction with a fine of one thousand Naira or in default of payment to six months imprisonment for failure or refusal to comply with the provisions.

The consequences of a conviction is very clear to any public servant as it would fetch the public officer outright dismissal. A public servant dismissed out rightly forfeits his service benefits including pension and gratuity and may be disqualified from holding any public office or contesting any elective position. Staff of local government are therefore kept in check by this section of the law.

(viii) **Periodic Elections**

It is often said that a statesman thinks about the next generation and a politician thinks about the next election. Election is a periodic phenomena. It is during elections that the people express their sovereignty;

they show that power belongs to them. It is also in election that they express their preferences. It is also a period of judgment. Governments or politicians or political party that did well is praised and thanked and encouraged by being voted back to power or is discredited by being voted out of power.

Ideally, therefore, the provision for periodic election in the law could constitute a check on the activities of local government functionaries, because the urge to win the next election could be a veritable inducement to making a government responsible and accountable.

CHAPTER EIGHT

THE LOCAL GOVERNMENT AND RURAL DEVELOPMENT

8.1 THE CONCEPT OF DEVELOPMENT

The concept of development has been perceived in various ways. In other words, the term development has no universally accepted definition. Walter Rodney, (1973) for instance, holds that development is a many-sided process which at the individual level "entails increased skill and capacity, greater freedom and creativity, self discipline, responsibility and material well being" and "at the group level involves an increasing capacity to regulate both internal and external relationships. In trying to explain the concept of development, Dudley Seers, (1969) cited by Abraham Nabhor) 2011:11) chose to raise three vital questions; "What is happening to poverty? What is happening to unemployment? What is happening to inequality" Where these things have declined from high levels, he said connotes a period of development for such a country.

Another perspective (/sees development as "a process that creates growth, progress, positive change or the addition of physical economic, environmental, social and demographic component". The purpose of development, the perspective maintains, is to "raise the

level and quality of life of the population and the creation or expansion of local regional income and employment opportunities….". The term can be said to be complex, contested, ambiguous and illusive. Simply stated, development aims at bringing about social change that allows people to achieve their human potential()

8.2 CONCEPT OF RURAL DEVELOPMENT

The term Rural Development has also been defined or described in different ways by different writers. For Idode, cited by Frank Onu it is "the restructuring of the economy in order to satisfy the material needs and aspirations of the rural members and to promote individual and collective incentives to participate in the process of development.

A writer, in in trying to explain the concept of rural development begins with an explanation of the word "rural". Rural he said "means an area which is marked by non-urban style of life, occupational structure, social organization and settlement pattern. Rural, he continued, is noticeably agricultural, its settlement system consists of villages and homesteads; socially it signifies greater inter-dependence among people, more deeply rooted community life and a slow moving rhythm of life built around nature and natural phenomenon; and occupationally it is highly dependent on crop farming, animal enterprises, tree crops and

related activities.

In the time past, rural development was borne in the context of agriculture – that is, an area for agricultural or farming purposes, inhabited by the poorest of the poor, small and petty farmers and peasants, wine tappers, petty traders, tenants and the landless. Consequently for many years rural development was neglected and relegated to the background and in the words of Eteng and Sophia, (2005:65-71) rural areas were "regarded as abodes of diseases, superstition, poverty, lethargy, low income and low productivity … Governments were virtually concerned with urban development and urban renewal programmes to the neglect of rural areas". The bare fact is that development since the colonial times has been slanted to the advantage of urban dwellers, even where more than eighty percent of the population are living in the rural areas; neglected, deprived and disregarded and their lives marked by poverty, ignorance, lack of potable water, lack of accessible roads, inadequate medical attention and poor sanitation. Frantz Fanon (1963:37) explained this deliberate, discriminatory, antagonistic and contradictory urban/rural development policy of the British colonial world in the following words:

> *The colonial word is a world of compartments. It is probably unnecessary to recall the existence of native quarters and*

> *European quarters, school for natives and schools for Europeans in the same way we need not recall Apartheid South Africa*

In the same dualistic manner, the British colonial masters Ugwuozor (2018:28) created two contradictory and antagonistic worlds – the urban and the rural worlds: one experiencing social and economic growth the other experiencing stagnation. In recent times however, there is a new understanding that development of rural, social and economic areas mean development of people living in rural areas and therefore, it is about improving the quality of life for rural people,… reduction of poverty, increasing productivity, providing basic services like health, education, drinking water, sanitation, expanding infrastructure,… redressing inequality, exploitation and deprivation,… It means improving the living standard or well being of the people, providing them security and basic needs like food, shelter, employment…

8.3. ROLE OF LOCAL GOVERNMENT IN RURAL DEVELOPMENT

In his first inaugural speech the Governor of Enugu State, His Excellency, Rt. Hon (Dr) Lawrence Ifeanyi Ugwuanyi (29th May 2015:5) said:

> *Your Excellencies, Distinguished guests, ladies and gentlemen,*

> *Enugu State will pay a special attention to rural development because majority of our people live in the rural area.*

The implication of the statement is that the development of the rural area is one of the cardinal programmes of his administration. Apart from the statement, his follow up actions show that Ifeanyi Ugwuanyi wants the villages to grow as the urban areas grow for an all-inclusive growth. For him if the rural Enugu is poor, then Enugu in its entirety is poor. Not quite long after the statement, in the 2017 democracy day address he said:

> *… A few days ago we simultaneously commissioned 26 development projects across the state. They were among the 35 grassroots project which were flagged off in 17 local government areas of the State in October, 2016. The thrust is to open up the rural areas and catalyse socio-economic growth.*

Between 2017 when he made the statement and now, the Governor has successfully executed a litany of rural development projects, that are scattered and located in all crannies of the state. Governor Ugwuanyi's Visit Every Community (VEC) programme is also worthy of

the attention of local government administrators. It is a programme that is laced with principles that characterize genuine democracy by promoting participation of the rural people in the affairs that concern them – a bottom –top approach to development.

As described by Ugwuozor (2015:53-54)

> *…VEC indeed is a conscious and deliberate exercise in the promotion of active citizenship in the sense that citizens are not only encouraged to know, embrace and exercise the full range of their political, civil, and social rights, but also encouraged to use those rights to improve the quality of their political and civil life through getting involved in the formal economy or formal politics.*

VEC as other people oriented outfits would as, Duncan Green (2008:12), puts it give the people "a voice in deciding their own destiny rather than be treated as passive recipients of welfare or government action"

The State Government's One Autonomous Community One Project Programme is also designed to "take development to the rural areas and ensure that no section of the state is left out in the development strides that are on-going". In this programme the people and

their leaders would autonomously and independently of government, identify and articulate their needs, priorities them, and execute their chosen project. Each community was granted the sum of five million naira (₦5,000,000) for the project out of the sum of ten million naira (₦10,000,000) promised to be given to all the communities. Each community was granted the sum of N10m for the project to be paid in two tranches of ₦5m.

These restatements of the State Governments policies and strides in the rural areas which include the maintenance of peace is to put local government administrations in the state on the route to follow and the perspectives that must be explored. More than eighty percent of the people of Enugu State, if not in Nigeria, live in the rural areas and the governments nearest to them are the local governments. This unique feature of being the nearest and closest government to the mass of the people places on the local governments very grave and enormous responsibilities.

The enormity of the responsibility facing the local government administrators was emphasized by His Excellency, the Governor of Enugu State the Daily Sun Newspaper (2020 :39), while inaugurating the newly – elected Chairmen and Deputies of the 17 Local Government areas in the State. In his address, he cautioned the Chairmen and Councillors to exercise

their "popular mandate with the fear of God" and charges them to lead with utmost sense of transparency, accountability, probity and humanness.

He told the Council members that:

> *In very difficult economic times like this, your Government must wear a human face and work to lift your people out of poverty, you must work diligently to execute t h e constitutional responsibilities of the third tier of government to h e l p u s t o c a t a l y s e r u r a l development*

The Governor further drew the attention of the Council administrators to the expectations of the people and said:

> *We want to see competitive development in the construction and maintenance of feeder roads, h e a l t h f a c i l i t i e s , p r i m a r y educational facilities, potable water, rural electrification, and investment in agriculture among others*

Standing on the strength of Ifeanyi Ugwuanyi's advise to the Local Government administrators, a restatement of the justifications for the existence of local governments may be necessary at this point, as values that must at all

times remain relevant in their minds and in the front burner of their administrations. Such justifications include:

(I) **Political Justification**

Prime Minister Jawahalal Nehru, of India, while inaugurating the first local Self-Government Minister Conference in 1949 said:

> *Local self government is and must be the basis for any true systems of democracy. We have got rather into the habit of thinking democracy at the top may not be successful unless you build on its foundation from below*

The above statement implies that local participation of the people depends on the disposition of the local authorities. It is the local government that would provide the opportunity for the participation of the people in its administration. As Ugwu observed, Local Government functions to provide democratic environment and afford opportunities for political participation. What must be noted is that if the goals of development of the local government area must be realized, people's participation is a prerequisite to it, and it is a vital instrument in democracy.

(ii) The justification for efficiency

The Local Government is closer to the people

more than the provincial, regional or state or central government. All politics, it is said, is local and all problem are not central problems. The closeness of the local government to the people is expected to have placed the local government officials in a better position to have better knowledge and information of local people. Put in another way, the leadership of the local government area is provided for the people from the local area in the form of elected chairmen and councilors and they live among the people, share the same culture and peculiarities with them. On this matter Harold Laski (1949) a foremost political scientist said:

> *We cannot realize the full benefit of democratic government unless we begin by the admission that all problems are not central problems and that the result of problems not central in their incidence requires decision at the place and by the persons where and by whom the incidence is most deeply felt.*

As Ajayi (2000:5) observed, the closeness of the local governments to the people and the smallness of the population of the people are compelling reasons why

the local government should be efficient in the provision of services. The closeness of the local government to the people as a very important factor in the development of the local government was emphasized by the Late Alhaji Abubakar Rimi (1978) cited by Samuel Ugwu (2017:13) in his remarks in the Constituent Assembly. He said:

> *Local Government is the most important, the nearest and most immediate government for the man. The man in my village does not care about who the president of Federal Republic of Nigeria. He does not care about who the Governor of Kano State is. He cares only about who are councilors of their local government.*

(iii) **The Justification for Accountability**

The local government which were created to provide civil services and amenities to the people and to be officiated by people elected by the people to represent ought or should be accountable to the people. In other words the councils are elective and responsible to the local people and the law.

In concluding this work, I will align myself with the view of Tabneem Sikauder (2015) who said:

> *Local government occupies a position of importance in the lives of the citizens. Of all government services, those provided by local government most directly affect the day-to-day lives of individuals. It is a generally accepted notion that the local authority provides many services which are necessary in civilized life.*
>
> *…Local governments came into existence for the purpose of providing the amenity to the masses.*
>
> *…In addition to the actual services furnished for the citizen, local government serves less tangible but equally important purposes in a democratic society.*

For one thing, it provides a stage for civic action, a school of citizenship.

BIBLIOGRAPHY

Adebayo, Augustus (1992) Principles and Practice of Public Administration in Nigeria Ibadan, Spectrum Books Ltd.

Adenwumi, Olayemi, et al (2010) History and Culture of the Nasarawa, Ahmadu Bello University Press Ltd.

Appadorai, A. The Substance of Politics, Oxford University Press Madrab, 1978

Cohen, David M (1996) CPM Working Paper Amateur Government: When Political Appointees Manage the Federal Bureaucracy, Washington, and Brooking Institution 1775 Massachusetts.

Eniola, Akin (1980) Public Service and the Law, University of Ife Press

Fanon, Frantz (1963) Wretched of the Earth, New York: Grove Press.

Green, Duncan (2008) Poverty to Power: How Active Citizens and Effective States Can Change the World, United Kingdom: Oxford International

Laski, H. J. (1949). A Grammar of Politics: Allen and Unwin Nablon, Abraham T. (2011) Dialectic of Underdevelopment in Africa: A Post Dependency frame-Work, Benin – City: Ethiope Publishing Corporation

Luce, R; Legislative, Problems, Dalapo Press, Newyork, 1971

Nwabueze, B.O.; Judicialism in Commonwealth Africa, London Churts and Co. Ltd, 1997

Nwabueze, B. O. The Presidential Construction of Nigeria, Nwamife Publishers Ltd; Enugu, 1982

Nwankwo, E. L. The Civil Service Discipline, De Victory Printers, Port Harcourt 1999

Odenigwe,G. A. A. New System of Local Government Nwamife Publishers, 1997

Office of the Governor (2015) Due Process: A Guide to Due Process Practice in Enugu State

Olusegun, Yerokun; (2016) Case on Constitutional Law Lagos: Princeton and Associates Publishing Company Ltd.

Rodney, Walter, (1972), How Europe Underdeveloped Africa: Bogle-L'ouverture Publications

Sapru, R. K. (2008) Administrations Theories and Management Thought, New Delhi: PHI Learning Private Limited.

Seers, Dudley (1972) The Meaning of Development in Uphoff N.T, Nichman W.E (Eds) The Political Economy of Development, Berkely, University of California

Sagay, Itse (1996) "The Travels of Democracy and the Rule of Law", Ibadan: Spectrum Books .

Sharitz, H.; Classics in Public Administration, Moore Publishers Company Inc; Illinois, 1978

Ugwu, S. C. (2000) Local Government and Urban Administration in Nigeria, Enugu Academic

Publishing Company.

Ugwu, Samuel C. (2017) Local Government Autonomy in Nigeria: Issues and Constraints, 25th Inaugural Lecture of Enugu State University of Science and Technology.

Ugwuozor, S. I., Change And Continuity in Local Government Administration Prints Konzult, Lagos, 2001

Ugwuozor, Sam (2015) Democracy and Participation: A Philosophical Analysis of Visit Every Community (VEC), Enugu: Mekanand Publications.

Ugwuozor, Sam (2018) In the Hands of God: Leadership and Common Good, Enugu: Mekanand Publications.

JOURNALS/NEWSPAPERS

Abubakar, H., The Implementation of the Revised Memoranda (F.M) and overview: Lecture Delivered at Nike Resort Hotel, Enugu, 15th and 18th March 1998

Adeyemi, O. O. (2018) Amalgamation and the Crisis of Governance: The Nigerian Experience Journal of Public Administration and Governance, 8(3) Macrothink Institute, https://doi.org/10.5296/jpag.v 8i3.13390

Akpan, et al; Crisis of Reform, Newswatch June 15, 1992

Anaye, Steve Paul, Akombo Elijah, The Doctrine of The Rule of Law: Necessity For Democratic

Governance; Global Journal of Human Social Science H. Interdisciplinary Vol 17 Issue 4 Version 1.0 2017

Anyanwu, Godfrey, "Ugwuanyi Inaugurates Newly Elected Council Chairmen" Daily Sun, (2nd March, 2020), 39

Bassey, Antigha Okon et al, An Examination and Consequences of Conflict Between Legislature and Executive in Cross River State, Nigeria, Academic Journal of Interdisciplinary Studies, Published by MCSER-CEMAS-Sapien 29 University of Rome, Vol 2 No1, 2013

Carmen Malena, Reiner Forster, Janmejay Smah. The Role of Civil Society in holding Government Accountable: A Perspective from the World Bank on the Concept and Emerging Practice of Social Accountability " Social Development Paper No 7 6 (December 2004)

Danjuma, Abdullahi, et al. An Appraisal of Local Government – Presidential System and Development: A case Study of Nengere/Potiskum Local Government Area of Yobe State, Journal of Public Administration, Vol 1, No.3, 2019

David, Jenkins, The Lockean Constitution: Separation of Powers and the Limits of Prerogatives, MCGILL Law Journal... Vol 5 6 , No3, April 2011

Diez, T; Bleffer, S; Albert M; The European Union and Border Conflicts The: Transformative Power Integration, International Organization, Vol 60 No 8, (2006)

Ejiofor, C. O., The Concept of Separation of Powers, Nigeria Journal of Public Administration and Local Government Vol. lll, No1 1985

Eteng, Sophia, "Rural Development in Nigeria: Problems and Remedies: An African Formal of Philosophy, Vol 8, 2005 Daily Sun, Tuesday, March 3, 2020

Eze, Michael Onyedikachi, "A Critique of 1976 Local Government Reforms: Its History, Structure and Impact After Forty Years in Operation in Nigeria; IOSR Journal of Humanities and Social Science (IOSR-JHSS), Vol 21, No 9, 2016.

Federal Republic of Nigeria: Model Financial Memoranda for Local Government, Third Edition, The Presidency Abuja 2009.

Joseph, Okwesili Nkwede et al, Academic Journal of Interdisciplinary Studies, Master Publishing, Rome-Italy Vol 3, No 4, July 2014

Lecture delivered in a National Seminar for State Legislators, Abuja, 1992.

Lockard, D. "Encyclopedia of Social Science", Vol. 9, New York V. Venkata Rao, "A Hundred year of Local Self-Government in Assein, Calcutta,

Beniparkash, Mander 1965 Federal Republic of Nigeria: Local Government Year Book 1998

Nicholas Cowdery, "The Rule of Law" in the International Legal Practitioner; Journal of the International Bar Association; Section on Legal Practice, June 1999, Vol 24 No 2. P56

Nnamdi Azikiwe, "Essential of Nigerian Survival," Foreign Affairs, Vol 48, No 3, 1965

Nwoba, Martin O.E, et al; Understanding the Dynamics of Legislative Powers in the Nigeria Local Government System: Implications for Rural Development.Journal of Policy and Development Studies Vol.9 No. 4, 2015

Oluwatobi, O. Adeyemi, Local Government Administration: An Perspective Journal of Public Administration and Governance; Macrothink Institute, 2019, Vol 9, No2

Susu, B. A., Legislative Investigation Under the Nigerian Constitution: Its Scope and Limitation.

Tasneem, Sikander, A Theoretical Framework of Local Government, International Journal of Humanities and Social Science Vol 5, No. 6(1); June 2015

Wall, A. J. (2011) Negotiation: Theory and Practice, African Journal of Social Policy and Administration, Vol 4, No2

INTERNET

Choi, N, "Rule of Law", available at <https://www.britannica.com/topic/rule-of-law>(2010)

CRF,"Pluto and Aristotle on Tyranny and the Rule of Law, Fall 2010(Vol. 26 no1), available online at <https://www.crf-usa.org/bill-of-rights-in-action/bria-26-1-plato-and-aristotle-on-tyranny-and-the-rule-of-law.html>

Faseluka, O. P., "Civil Service Administration and Effective Service Delivery for Development" available at <https://guardian.ng/features/civil-service-administration-and-effective-service-delivery-for-development>(11 March, 2015)

Ghai, K.K., "Separation of Powers: What is the Theory of Separation of Powers?" available at <https://www.yourarticlelibrary.com/constitution/separation-of-powers/40336>

Oguonu C., "Due Process and Procurement in the Nigerian Public Sector," available at

United Nations, “What is the Rule of Law,” available at <https://www.un.org/rule of law/what-is-the-rule-of-law/>

Wikipedia, “Bureaucracy” available at <https://en.m.wikipedia.org/wiki/bureaucracy>

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APPENDIX 1
PUBLIC PROCUREMENT ACT 2007

Extraordinary **A 203**

Federal Republic of Nigeria
Official Gazette

No. 65 **Lagos—19th June, 2007** **Vol. 94**

Government Notice No. 44

The following is published as Supplement to this *Gazette* :

Act No.	*Short Title*		*Page*
14	Public Procurement Act, 2007	..	A 205-249

Printed and Published by The Federal Government Printer, Lagos, Nigeria.
FGP 107/72007/1,000 (OL 73)

Annual Subscription from 1st January, 2007 is Local : ₦15,000.00 Overseas : ₦21,500.00 [Surface Mail] ₦24,500.00 [Second Class Air Mail]. Present issue ₦1,500.00 per copy. Subscribers who wish to obtain *Gazette* after 1st January should apply to the Federal Government Printer, Lagos for amended Subscriptions.

PUBLIC PROCUREMENT ACT, 2007

ARRANGEMENT OF SECTIONS

SECTION :

PART I — ESTABLISHMENT OF NATIONAL COUNCIL ON PUBLIC PROCUREMENT

PART II — ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT

PUBLIC PROCUREMENT ACT, 2007
2007 ACT No. 14

AN ACT TO ESTABLISH THE NATIONAL COUNCIL ON PUBLIC PROCUREMENT AND THE BUREAU OF PUBLIC PROCUREMENT AS THE REGULATORY AUTHORITIES RESPONSIBLE FOR THE MONITORING AND OVERSIGHT OF PUBLIC PROCUREMENT, HARMONIZING THE EXISTING GOVERNMENT POLICIES AND PRACTICES BY REGULATING, SETTING STANDARDS AND DEVELOPING THE LEGAL FRAMEWORK AND PROFESSIONAL CAPACITY FOR PUBLIC PROCUREMENT IN NIGERIA; AND FOR RELATED MATTERS.

Commencement.

[4*th Day of June*, 2007]

ENACTED by the National Assembly of the Federal Republic of Nigeria;

PART I – ESTABLISHMENT OF NATIONAL COUNCIL ON PUBLIC PROCUREMENT

Establishment of the National Council on Public Procurement and its membership.

1. (1) There is established the National Council on Public Procurement (in this Act referred to as "the Council").

(2) The Council shall consist of:

(*a*) the Minister of Finance as Chairman;

(*b*) the Attorney-General and Minister of Justice of the Federation;

(c) the Secretary to the Government of the Federation;

(*d*) the Head of Service of the Federation;

(*e*) the Economic Adviser to the President;

(*f*) six part-time members to represent;

(*i*) Nigeria Institute of Purchasing and Supply Management;

(*ii*) Nigeria Bar Association;

(*iii*) Nigeria Association of Chambers of Commerce, Industry, Mines and Agriculture;

(*iv*) Nigeria Society of Engineers;

(*v*) Civil Society;

(*vi*) the Media; and

(*g*) the Director-General of the Bureau who shall be the Secretary of the Council.

(3) Notwithstanding the provisions of Section (2), the Council may co-opt any person to attend its meeting but the person so co-opted shall not have a casting vote or be counted towards quorum.

(4) The Chairman and other members of the Council shall be appointed by the President.

(5) Subject to sub-section (2) of this Section, a member of the Council being:

(*a*) the holder of an elective office under the Constitution of Nigeria, shall hold office for a period he remains so elected and no more ; and

(*b*) the Director-General of the Bureau, shall hold office on such terms and conditions as may be specified in his letter of appointment.

Functions of the Council.

2. The Council shall:

(*a*) consider, approve and amend the monetary and prior review thresholds

for the application of the provisions of this Act by procuring entities;

(*b*) consider and approve policies on public procurement;

(*c*) approve the appointment of the Directors of the Bureau;

(*d*) receive and consider, for approval, the audited accounts of the Bureau of Public Procurement; and

(*e*) "approve changes in the procurement process to adapt to improvements in modern technology" ;

(*f*) give such other directives and perform such other functions as may be necessary to achieve the objectives of this Act.

PART II—ESTABLISHMENT OF THE BUREAU OF PUBLIC PROCUREMENT

The establishment of the Bureau of Public Procurement.

3.—(1) There is established an agency to be known as the Bureau

(2) The Bureau:

(*a*) shall be a body corporate with perpetual succession and a common seal;

(*b*) may sue and be sued in its corporate name; and

(*c*) may acquire, hold or dispose of any property, movable or

immovable for the purpose of carrying out any of its functions under this Act.

Objectives of the Bureau.

4. The objectives of the Bureau are :

(*a*) the harmonization of existing government policies and practices on public procurement and ensuring probity, accountability and transparency in the procurement process;

(*b*) the establishment of pricing standards and benchmarks;

(*c*) ensuring the application of fair, competitive, transparent, matneney standards and practices for the procurement and disposal of public assets and services; and

(*d*) the attainment of transparency,

competitiveness, cost effectiveness and professionalism in the public sector procurement system.

Functions of the Bureau.

5. The Bureau shall:

(*a*) formulate the general policies and guidelines relating to public sector procurement for the approval of the Council;

(*b*) publicize and explain the provisions of this Act;

(*c*) subject to thresholds as may be set by the Council, certify Federal procurement prior to the award of contract;

(*d*) supervise the implementation of established procurement policies;

(*e*) monitor the prices of tendered items and keep a national database of standard prices;

(*f*) publish the details of major contracts in the procurement journal;

(*g*) publish paper and electronic editions of the procurement journal and maintain an archival system for the procurement journal;

(*h*) maintain a national database of the particulars and classification and categorization of federal contractors and service providers;

(*i*) collate and maintain in an archival system, all federal procurement plans and information;

(*j*) undertake procurement research and surveys;

(*k*) organize training and development programmes for procurement professionals;

(*l*) periodically review the socioeconomic effect of the policies on procurement and advise the Council accordingly;

(*m*) prepare and update standard bidding and contract documents;

(*n*) prevent fraudulent and unfair procurement and where necessary apply administrative sanctions;

(*o*) review the procurement and award of contract procedures of every entity to which this Act applies;

(*p*) perform procurement audits and submit such report to the National Assembly bi-annually;

(*q*) introduce, develop, update and maintain related database and technology; (*r*) establish a single internet portal that shall, subject to Section 16 (21) to this Act serve as a primary and definitive source of all information on government procurement containing and displaying all public sector procurement information at all times ; and

(*s*) co-ordinate relevant training programs to build institutional capacity.

6.—(1) The Bureau shall have the power to:

Powers of the Bureau.

(*a*) enforce the monetary and prior review thresholds set by the Council for the application of the provisions of this Act by the procuring entities;

(*b*) subject to the paragraph (*a*) of this sub-

section, issue certificate of "No Objection" for Contract Award" within the prior review threshold for all procurements within the purview of this Act;

(*c*) from time to time stipulate to all procuring entities, the procedures and documentation pre-requisite for the issuance of Certificate of 'No Objection' under this Act;

(*d*) where a reason exist :

(*i*) cause to be inspected or reviewed any procurement transaction to ensure compliance with the provisions of this Act,

(*ii*) review and determine whether any procuring entity has violated any provision of this Act;

(*e*) debar any supplier, contractor or service provider that contravenes any provision of this Act and regulations made pursuant to this Act;

(*f*) maintain a national database of federal contractors and service providers and to the exclusion of all procuring entities prescribe classifications and categorizations for the companies on the register;

(*g*) maintain a list of firms and persons that have been debarred from participating in public procurement activity and publish them in the procurement journal;

(*h*) call for such information, documents, records and reports in respect of any aspect of any procurement proceeding where a breach, wrongdoing, default, mismanagement and or

collusion has been alleged, reported or proved against a procuring entity or service provider;

(*i*) recommend to the Council, where there are persistent or serious breaches of this Act or regulations or guidelines made under this Act for:

(*i*) the suspension of officers concerned with the procurement or disposal proceeding in issue;

(*ii*) the replacement of the head or any of the members of the procuring or disposal unit of any entity or the Chairperson of the Tenders Board as the case may be;

(*iii*) the discipline of the Accounting Officer of any procuring entity;

(*iv*) the temporary transfer of the procuring and disposal function of a procuring and disposing entity to a third party procurement agency or consultant; or

(*v*) any other sanction that the Bureau may consider appropriate;

(*j*) call for the production of books of accounts, plans, documents, and examine persons or parties in connection with any procurement proceeding;

(*k*) act upon complaints in accordance with the procedures set out in this Act;

(*l*) nullify the whole or any part of any procurement proceeding or award which is in contravention of this Act;

(*m*) do such other things as are necessary for the

efficient performance of its functions under this Act.

(2) The Bureau shall serve as the Secretariat for the Council.

(3) The Bureau shall, subject to the approval of the Council, have power to:

(*a*) enter into contract or partnership with any company, firm or person which in its opinion will facilitate the discharge of its functions;

(*b*) request for and obtain from any procurement entity information including reports, memoranda and audited accounts, and other information relevant to its functions under this Act; and

(*c*) liaise with relevant bodies or institutions national and international for effective performance of its functions under this Act.

Director-General and staff of the Bureau.

7.—(1) There shall be for the Bureau, a Director-General who shall be appointed by the President, on the recommendation of the Council after competitive selections.

(2) The Director-General shall be:

(*a*) the Chief Executive and accounting officer of the Bureau;

(*b*) responsible for the execution of the policy and day to day administration of the affairs of the Bureau; and

(*c*) a person who possesses the relevant and adequate professional qualification and shall have been so qualified for a period of not less than 15 years.

(3) The Director-General shall hold office:

(*a*) for a term of 4 years in the first instance and may be re-appointed for a further term of 4 years and no more; and

(*b*) on such terms and conditions as may be specified in his letter of appointment.

(4) Without prejudice to the provisions of this Act, the Director-General of the Bureau may be removed from office at the instance of the President on the basis of gross misconduct of financial impropriety, fraud, and manifested incompetence proven by the Council.

Principal officers of the Bureau.

8.—(1) The Council shall appoint the principal officers for the Bureau after competitive selection process.

(2) The principal officers appointed under Section 9(1) of this Section shall each have the requisite qualification and experience required for the effective performance of the functions of their respective Departments and the Bureau as specified under this Act.

(3) The Council shall have power to modify the operational structure of the Bureau as may be necessary to enhance the Bureau's duties and functions under this Act.

Other staff of the Bureau.

9.—(1) The Council may appoint such officers and other employees as may, from time to time, deem necessary for the purposes of the Bureau.

(2) Subject to the Pension Reform Act, the terms and conditions of service (including remuneration, allowances, benefits and pensions) of

officers and employees of the Bureau shall be as determined by the Council.

(3) Without prejudice to the generality of sub-section of this Section, the Council shall have power to appoint either on transfer or on secondment from any public service in the Federation, such number of employees as may, be required to assist the Bureau in the discharge of any of its functions under the Act and persons so employed, shall be remunerated (including allowances) as the Council may consider appropriate.

THE RULE OF LAW

AND LOCAL GOVERNMENT ADMINISTRATION IN NIGERIA

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ISBN 978-3405- 66- 7

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