

An Appraisal of the Legality of Caretaker Committee at the Local Government Level in Nigeria's Fourth Republic

BY

Adekeye Adeshola Joseph, Ph.D

Department of Public Administration, Federal University Lokoja
G.S.M: 08060326463, EMAIL: Josssy2014@gmail.com

&

Hussaini Danladi, Ph.D

Department of Public Administration, Taraba State University, Jalingo
Taraba State

Mobile: 07063858699, Email: danladihussaini3@gmail.com

Abstract

This paper examines the legality of appointing Caretaker Committee at the local government level by State governors in a constitutional democracy. The objective of the study is to ascertain whether the practice of appointing Caretaker Committee at the local government level in Nigeria is constitutional or otherwise. In efforts to achieving the above objective, the true federalism approach was adopted as a theoretical framework. Methodologically, the secondary method was adopted through the content analysis of 1999 constitution of the Federal Republic of Nigeria, 176 and 1988 local government reforms guidelines, 2014 Constitutional Conference Report and appropriation bills signed into laws before arriving at logical conclusions. The findings of the paper revealed that the constitutional provisions in section 7(1) of 1999 Constitution of the Federal Republic of Nigeria recognized local government as a third tier of government but empowered the state governor to be responsible for the establishment, structure, compositions, finance and functions of such councils. This inconsistency in constitutional provision formed the bases for the arbitrary dissolution of democratic local government and subsequent replacement with a Caretaker Committee appointed by the state governor. The paper recommended the amendment of the 1999 constitution of the Federal Republic of Nigeria in order to accommodate 4 years tenure for political officers at the local government level. Also, elections should be organized as at when due to avoid vacuum in government. Above, all, the Independent National Electoral Commission (INEC) should be responsible for the conduct and management of elections at the local government levels in order to check the excesses of state governments.

Key words: Local government, Caretaker Committee, Fiscal Federalism, Intergovernmental Relations, Constitution

Introduction

The purpose of creating local government at the grassroots level is to promote the tenets of democracy and ensure popular participation in political activities. In pursuant of the above objective, section 7(1) of 1999 Constitution of the Federal Republic of Nigeria made clear provision for the establishment of a democratic local government Councils at the grassroots level. However, the practice of grassroots politics in Nigeria since independence is

far from being democratic since the rural dwellers are not given the opportunity to democratically elect their representatives in government. Although, the 1976 Local Government Reforms introduced an all-purpose and uniform third tier of government but the practice of grassroots democracy across all States of the Federation have proven otherwise.

In the first place, some States of the Federations usually conduct elections at the grassroots level while others focus on appointing Sole Administrators or Caretaker Committees to run the affairs of Local government. Sometimes, in State where elections are conducted, the rural populace are not given the opportunity to choose their representative in a free and fair manner due to the over bearing influence of State Governors on the activities of State Independent Electoral Commission (SIEC), Security Agencies and Political Parties. In view of the above, rural dwellers are completely excluded in policy formulation and implementation at the grassroots levels in Nigeria.

Secondly, the collapse of first republic and subsequent intervention of the Military in Nigeria's body polity paved way for the appointment of Caretaker Committees or Sole Administrators at the grassroots level through the suspension of constitutional provision in favor of decrees. This practice was sustained and maintained till the advent of the fourth republic. The inability of the people at the grassroots level to democratically elect those to represent them at the local government has made it difficult if not impossible to hold anyone accountable for his or her actions while in office.

Thirdly, the kind of politics played at the grassroots level in Nigeria is such that the state government is constitutionally empowered to determine the composition of local government councils. For instance, appointment into political offices at the grassroots level is purely based on loyalty and not track record or academic qualification. In most cases, when elections are conducted at the grassroots level, almost all elected members of local government councils usually belong to the ruling party at the state level. In the light of this, there appears to be no difference between the conduct of elections or appointment of caretaker committee since State Governors are the sole determinant of those to be members of local government council.

Above all, the bane of development at the grassroots level in Nigeria is the inability to enhance grassroots democracy and popular participation in governance. The lack of involvement of the people at the grassroots level has made the aim of bringing government closer to the rural populace a mirage. In most cases, the programs of government are not tailored towards addressing the plight of the people at the grassroots level since elected or appointed representatives are not in constant touch with the rural populace. It is against this background that this study critically assesses the legality or constitutionality of the appointment of caretaker committee at the grassroots level in Nigeria.

Objective of the Paper

The general objective of this paper is to determine the legality or constitutionality of appointing caretaker committee to run the affairs of local government in place of elected representatives of the people. However, the specific objectives are to; (1) Determine the factors responsible for the unfettered practice of appointing caretaker committee at the grassroots level in Nigeria and (2) Assess the legality and implications of appointing caretaker committee instead of elected representatives at local government level by State Governors.

Methodology of the Paper

This paper adopted a qualitative method for the purpose of data collection. Therefore, secondary sources were used for obtaining the required information through the content analysis of documents, records, reports and periodical articles. This is not unconnected with the fact that series of publications have been made on issues regarding the practice of appointing caretaker committee at the grassroots level in the fourth republic. Specifically, the documents used for the study are; the constitution of the Federal Republic of Nigeria, local government reform guidelines and the report of 2014 National Conference.

Conceptual Clarification

a) Local Government

Decentralization may be in form of devolution or deconcentration. In devolution, local council is referred to as “local government” or “local governance” since power is constitutionally transferred from higher levels of government to local authorities. On the other hand, a deconcentrated arrangement is referred to as; “local administration”, “field unit”, “agents or prefects” since power is delegated from higher to local units without constitutional backing. In this kind of arrangement, local government has no power to formulate its policies but can only implement the policies formulated at higher levels of government.

In a federation, local government is a third tier of government or representative council established by law to function within its jurisdiction in a given area or location. It is a legal body with minimal autonomy to raise tax and render services to the people at the grassroots level. Local government can equally be conceived as a tier of government at local level with the responsibility of meeting the needs of people at the grassroots level. According to the provisions of The Guidelines for Local Government Reform (1976) in Nigeria, “level of government exercised through representative councils established by law, with specific powers within defined areas”. This means that local government is constitutionally empowered to discharge its responsibilities within specific areas of jurisdiction.

In practice, local government may not be constitutionally recognized in a unitary arrangement since it only exists for the mere purpose of ensuring administrative convenience. In some cases, decentralization may be deeper in a unitary government than in a federation. By implication, the kind of local government system being practiced in a unitary or federal system of governments depends largely on the styles of leadership by men and women in leadership at a given period of time. For instance, Nigeria is operating a federal system of government but local government is an appendage to the higher levels of government whereas, local government enjoys higher autonomy in Britain that operates in unitary system of government.

b) Caretaker Committee

This refers to a temporary body appointed by State government to run the affairs of local government council before election conducted at the long run. This is usually done in order to avoid vacuum in government. Other names being used in place of caretaker committee are; transition committee, management board, development committee, Sole Administrator and manager. This kind of arrangement is not in line with the section 7 (1) of the 1999

constitution of the federal republic of Nigeria which made provision for the operation of a democratically elected local government council.

The emergence of Caretaker Committee system became operational in the Second Republic since the 1979 constitution was silent on the tenure of local government council. This view was corroborated by Ananti, Oyekwelu and Madubueze (2015) when they opined that during the Second Republic in all states of the federation, local governments were run by Caretaker Committee systems, consisting of party loyalists appointed by state governors. However, the introduction of 1988 local government reforms by General Ibrahim Babangida and the provisions of 1989 constitution temporarily stopped the operation of caretaker committee system for a while. After the successful hand over of government from the military to a democratically elected government in the Fourth Republic and introduction of 1999 constitution, the practice of Caretaker Committee system was restored in year 2000.

In the opinion of Okafor and Orjinta (2013), 25 out of 36 states in Nigeria have their local government administered by Caretaker Committees between 2003- 2013. This view was shared by Ojo and Ihemeje (2014) “that as at 2014, the Nigerian democratic system had nosedived, this is more so as 27 states in Nigeria have not conducted local government elections in the past five (5) years (Ananti, Oyekwelu and Madubueze, 2015)

Theoretical Framework

This research is anchored on democratic participatory theory. According to Sharpe (1970), one of the related aspects of democratic values of local government is the idea that the councils serves as political education, and as a means of civilizing man through the medium of self-government. This contention was collaborated by Adeyemo (2010) when he argued that local government motivates the citizen by engaging them in political education and political participation. In the same vein, Sharpe (1970) argued that it is at least a great indispensable and comprehensible attribute. Ezeani (2004) also observed the democratic virtues of local government, especially, its role as an instrument or agent for political education. The second contention on the theory is the widespread unwillingness to accept the full consequences of democracy where it involves the man in the street actually taking part in government. Another democratic value of the theory is the claim that local government serves as a training ground for democracy to strive. Furthermore, the theory sees local government as the essential element for establishing a stable and harmonious national state, the breeder of better societies. That is, it is only by participating in and learning the arts of self-government at the local government level that the individual had a stake in and came to appreciate the virtues of free government at the national level (Sharpe, 1970). However, the theory has been criticized for having some shortcomings. First, is that local community interests do not necessarily coincide with personal interest, neither with the national interest. Again, critics also argued that the theory does not necessarily prove convincingly that local government always provide a training ground for the higher levels of government. On this note, political structure is regarded as the super structure, thus, ultimately affects other structures in the social system. If the local government councils fail to attain political autonomy, invariably they will also be denied of administrative and financial autonomy.

The application of democratic participatory theory to this study became imperative since the conduct of general elections at the local government level will go a long way in

encouraging popular participation in governance through political education, public enlightenment, exhibition of parties manifestoes, inclusiveness and accountable leadership to the people. However, the practice of appointing caretaker in place of electing local government officials through general elections has defeated the goal of enhancing popular participation in governance at the grassroots level in Nigeria.

Factors Responsible for the Continuous Existence of Caretaker Committees at the Local Government Levels in Nigeria

It is on record that all efforts by successive administrations to put an end to the practice of appointing Caretaker Committee to run the affairs of local government in Nigeria has been an exercise in futility since independence. The Supreme Court judgment in a case brought by sacked local government chairpersons in Ekiti State, declared as illegal the governors' removal of elected officials of local councils. Kayode Fayemi, as governor in 2010, reportedly announced the dissolution of the councils on October 29, 2010, when the elected council officials still had up till December 19, 2011, to end their three-year tenure. Although the Appeal Court gave judgment in favor of the sacked council chairpersons, the Ekiti State Government challenged the decision of the Appeal Court and proceeded to the Supreme Court. The Supreme Court in the judgment nullified the power of state governors, derived from laws passed by the Houses of Assembly, to sack elected Local government chairmen. It also stopped the state Houses of Assembly from empowering the governor to replace the sacked chairmen with interim administrators. By implication, the apex court declared as illegal administrators at the local levels not duly elected as provided for in the 1999 Constitution as amended (Oluwole, 2020).

As at February 8, 2020, 14 states are in defiance of the Supreme Court judgment on the illegality of using caretaker committees. The states are Oyo, Ondo, Katsina, Borno, Yobe, Kwara, Kogi, Bauchi, Taraba, Benue, Enugu, Anambra, Imo and Ogun. However, many states had earlier conducted council elections, which were largely won by the ruling parties. Such states include Adamawa, Rivers, Zamfara, Kaduna, Nasarawa, Bayelsa, Delta, Ekiti, Lagos, Jigawa, Niger, Plateau, Osun, Kwara, Kano, Edo and Delta (Oluwole, 2020). Extensive review of literatures reveals that the factors responsible for the inability to permanently lay the issue of using undemocratic and unconstitutional means of running the affairs of local government to rest are:

- 1. Inconsistency in Constitutional provision:** Section 7(1) of 1999 Constitution of the Federal Republic of Nigeria made provision for the existence of a democratically elected local government councils but the same constitution equally stated that the State government shall be responsible for determining the; establishment, structure, composition, finance and functions of local government councils. Also, the constitution made provision for four-year tenure for elected representatives at the federal and state level but it was silent on tenure of local government. At the commencement of Fourth Republic in 1999, the electoral law under which the local government officials were elected to office (The Constitutional and Transitional Provisions Decree No. 36 of 1998) provided for three-year tenure. This meant that the

tenure was to end in May 2002. The local government officers desiring to have their tenure extended by one year to bring it at par with the state and federal government officials found a ready support in the National Assembly, Electoral Act, 2001 which extended the tenure of local government officials to four years. The State governments not satisfied with the above provision took the matter to court and won. Subsequently, respective state government appointed caretaker committees to run the affairs of local government councils after the expiration of three years in May, 2002 until another date of election was agreed (Obidimma and Obidimma, 2016).

2. **Provision of Voters List:** Constitutionally, the federal government under the umbrella of Independent National Electoral Commission (INEC) is permitted by law to provide the list of voters for the conduct of federal, state and local government elections. At the same time, the conducts of local government election is under the supervision of State government through the instrumentality of State Independent Electoral Commission (SIEC). At the expiration of the tenure of elected local government council, the state government may have put in place the machinery in motion for the conduct of local government elections but such exercise may not go on if the Independent National Electoral Commission (INEC) fails to provide the list of voters register for such election. This has been one of the major excuse for appointing caretaker committee to run the affairs of local government council pending the time election will be conducted.
3. **Insecurity:** It is difficult if not impossible to conduct local government elections in a state where the security of lives and property of citizens are not guaranteed. In a situation of this nature, the only option left is to appoint caretaker committee at the expiration of elected local government council to pilot the affairs of the area before the period when elections can be conducted. In Borno State for example, the State government refused to comply with the directive of the Attorney General of the Federation (AGF) to disband the appointed caretaker committee and restore elected local government council by citing insecurity as an excuse.
4. **Litigation:** Newly elected governors are always in the habit of dissolving elected local government council during the previous administration and replacing same with caretaker committee in order to work with official considered to be loyal to them. Subsequently, aggrieved persons usually seek for redress in court. When asked to return to the statusquo, the immediate excuse would be that no action can be taken on matters in court. For in instance, the governor of Oyo State, Seyi Makinde, sacked the chairpersons and councilors from the 33 local government councils and 35 development areas and constituted caretaker committees few hours after his inauguration as the executive governor of the state. His reason was that the election that brought them into office was done by the previous administration against a subsisting court order. He had asked the sacked officials to challenge his action in court.

Subsequently, the Attorney General of the Federation (AGF), Abubakar Malami ordered the governor to immediately disband all caretaker committees and restore democratically elected representatives to man the local governments in accordance with the decision of the Supreme Court on the matter that is binding on all 36 States of the Federation. In spite of the AGF's directive, the Oyo State Government argued that the AGF could not have intervened in such a matter while it is still a subject of litigation (Oluwole, 2020).

5. **Sit Tight syndrome:** The major cause of maneuvering and political intrigues regarding the practice of appointing caretaker committee at the grassroots level can be traced to the desire of political office holders to sit tight or elongate their tenure to eight years. They may argue that the wisdom behind such actions is to avoid creating vacuum in governance but the bone of contention is to provide opportunity for the appointment of cronies and sycophants who will work for the interest of incumbent Governors.

6. **Party Politics:** It is common knowledge that in situation whereby local government election is to be conducted at all, the ruling party usually secure landslide victory due to all manner of political and electoral manipulations and irregularities. As a matter of fact, the Executive Governor who is equally the Chief Security Officer of state is the one responsible for the appointment of a Chairman for State Independent Electoral Commission (SIEC) and making funds available for the conduct of elections. It is difficult if not impossible for the ruling party to lose election in a scenario whereby all the stakeholders responsible for conducting elections are loyalists to the incumbent Governor.

Appraising the Legality and Implications of the use of Caretaker Committee in Local Governments

The appointment of caretaker committee to run the affairs of local council is illegal in a federation like Nigeria since the constitution made provision for a democratically elected local government. However, the fact that the same constitution was silent on the tenure of local government council give room for the appointment of caretaker committee since there should not be any vacuum in governance. Coincidentally, the governors want to consolidate their stay and control the resources accruing to the councils without any opposition by appointing their cronies into office illegally. The consequences of this scenario is that these appointed caretaker/transition committee members serve the interest of their political god fathers rather than the wishes and aspiration of the masses they claim to serve.

It is noted that since SIEC took over the conduct of local government elections in Nigeria, it has been abused by the state governments and used against the opposition, simply because it is under the control of state governors. For instance, since the creation of SIEC no state in Nigeria has had up to two local government chairmen voted from opposition parties. SIEC always declared the ruling political parties in the states as winners of all the contested seats in local government elections (Obidimma, 2015).

The Constitution further gives room for possible abuse of power by the state government by giving the power for the compilation and updating of the voters register, to be used by the state to conduct local government elections, to the federal government through its agency the INEC. This arrangement that creates a situation where one level of government will depend on another level to carry out its basic function certainly allows grounds for failure of the level to carry out that particular function on the excuse of failure of the other level to do that required for it to perform that function (Obidimma and Obidimma, 2016).

The above arrangement thus allows for inefficiency, and the states have constantly claimed that their failure to conduct local government was as a result of the failure of INEC to update the voters list for that purpose. With the enormous powers of the state government to deal with local government and the other constitutional issues on local government many greedy state governors find excuses to use caretaker committees in managing local government councils in their states with reasons ranging from inability to conduct elections due to INEC's failure to provide voters list to inefficiency of the elected officials (Obidimma and Obidimma, 2016).

Conclusion

The paper examines the legality of appointing caretaker committee at the local government level in a constitutional democracy. The outcome of the study reveals that section 7 (1) of 1999 constitution of the Federal Republic of Nigeria made provision for a democratically elected local government council. However, the same section of the constitution declared that the State government shall be responsible for determining the establishment, structure, composition, finance and functions of local government councils. In light of the above constitutional provision, State government usually constitutes caretaker committee at the expiration of the tenure of democratically elected local government council temporarily before the conduct of elections. Such opportunity is exploited for the compensation of certain individuals or party faithful(s) who played key roles (either through financial donation, physical presence during electioneering campaign or other means) in the ascendancy to power of the state governors.

Caretaker committee members are more or less errand boys of the governors or at best, aides or loyal party member at the grassroots level. They assist the Governor to achieve the objective of securing second term bid effortlessly. At the inception of fourth republic in 1999, all efforts towards extending the tenure of local government councils from 3 to 4 years were to no avail due to the victory secured through judicial interpretations on the matter by State governments. The fact that the constitution was silent with regard to the exact tenure of local government councils made it possible for State governors to manipulate the process to their own advantage. Unfortunately, the practice of appointing caretaker committee at the grassroots level in Nigeria is not the norm in the United States of America and other western societies where the political system in Nigeria was borrowed. The practice of making local council an appendage of State government has been the bane of development at the grassroots level in Nigeria since independence.

Recommendations

In the light of observations made, issues discussed and findings discovered, the following recommendations are considered fundamental to this study:

1. The provision of section 7 (1) of 1999 constitution which provided that the establishment, structure, composition, finance and functions of a democratically elected local government council shall be determined by State government should be amended in order to put a stop to the appointment of caretaker committee at the grassroots level in Nigeria.
2. The 1999 constitution of the Federal Republic of Nigeria should be amended in order to ensure that clear provision is made to guarantee 4-year tenure for local government council in order to prevent the possibility for the appointment of caretaker committee by State government at the expiration of 3 years tenure.
3. The Joint-State-Local Government-Allocation Account should be discontinued forthwith and all the allocations of LGAs should be sent directly to them to avoid diversion of such funds by state governors.
4. The Independent National Electoral Commission (INEC) should be responsible for the conduct and management of local government elections in order to reduce the over bearing influence of state government in the electoral processes.
5. The funding of State Independent Electoral Commission (SIEC) should be the sole responsibility of the Independent National Electoral Commission (INEC) in order to guarantee free and fair elections at the grassroots level.

References

- Adeyemo, D. O (2010). "Optimizing Local Government Finance Through Public-Private Partnerships". A Paper Presented at the National Workshop on "The Local Government Structure and Potentials for Socio-Economic Development of Nigeria" on 24th-26th November, 2010. At D"Rovan Hotels Ltd, Ring Road, Ibadan, Oyo State, Nigeria.
- Ananti, M. O, Onyekwelu, R. U & Madubueze, M.C (2015) "Caretaker Committee System and Democratic Governance in Nigeria's Local Government System: 2003-2014 in *Anambra State Global Journal of Management and Business Research: Administration and Management*. Global Journals Inc. (USA) Volume 15 Issue 1.
- Ezeani, O. E. (2004). *Local Government Administration*. Enugu: Zik-Chuks Nigeria.
- Obidimma, E. O. C. and A. E. Obidimma(2016) "Legality of Caretaker Committees to Manage Local Government Councils in Nigeria". *International Journal of Innovative Research & Development* Page 203. www.ijird.com April, Vol 5 Issue 5. ISSN 2278 – 0211 (Online)
- Okafor, J.C & Orjinta, I.H (2013), "Constitutional Democracy and Caretaker Committee in Nigeria Local Government System: An Assessment". *Commonwealth Journal of*

Local Governance. <http://www.epress.lib.uts.edu.au/ojs/index/php/cjlg>. Accessed on 10th April, 2019

Oluwole, J. (2020) "LGA Controversy: States deny receiving Attorney-General's memo on Caretaker Committees". *Premium Times*, February 8.

Sharpe, L. P. (1970). "Theories and Values of Local Government". *Political Studies*, Vol.18.

Brief Bio-data of the Authors

Adekeye Adeshola Joseph is Lecturer II in the Department of Public Administration, Federal University Lokoja. His area of research interest is policy analysis. He holds a PhD Degree from the Department of Public Administration, University of Abuja. He is the Ag. Head, Department of Public Administration, Federal University Lokoja.

Hussaini Danladi is Lecturer I in the Department of Public Administration, Taraba State University, Jalingo. His areas of research interest are Policy Analysis and E-Governance. He holds a Ph.D Degree from the Department of Public Administration, University of Abuja, Nigeria. He is the Director of Examinations, Taraba State University, Jalingo. He has various Publications in both local and international journals.