Constitutional Responsibility for Creating New Local Government Areas in Lagos State

Oluwaseyi Leigh*

Abstract
Bringing into existence through legislative process additional local government areas under the Constitution of the Federal Republic of Nigeria, 1999, has been a thorny issue generating unending controversies. The debate on whose responsibility it is, between the federal government and the federating states—to bring into existence, new local government areas within the territory of Nigeria as prescribed in the Constitution, has been as passionately conducted as it is contentious. There has been no helping of the matter either, as a result of the seemingly 'inchoate' decision arrived at by the Supreme Court in the AGL v AGF case, despite available clear constitutional provisions on the matter. This paper examines the responsibility for the creation of a local government area from the point of view of the Constitution of the Federal Republic of Nigeria, 1999, especially at this period when some federating states in the country are variously warming up to embark on creation of local councils within the geographical territory of such states. The paper therefore integrates elements from the theory of federalism and federal government structure, the theory of separation of powers, and the theory of constitutional supremacy, to develop a theory that the constitutional responsibility for the creation of local government areas resides in the states which constitute the federating units.

Introduction

This study turns on the controversial question of the beneficiary of the constitutional power for the creation of local government areas which constitute the third tier of government under the Constitution of the Federal Republic of Nigeria. Realising an 'acceptable' constitutional response to the question will prevent much dissipation of energy which had occurred in the past by challenging the confusion and raging controversy which attended the status of the 37 local government areas which the Lagos State

* Senior Lecturer, Faculty of Law, Olabisi Onabanjo University, Ago-Iwoye, Ogun State.

Government purportedly created in exercise of its constitutional authority to create local council areas. The quest to locate an acceptable response must necessarily prevail over the 'sanctity of the constitution' test, since the constitution is the *grundnorm* and *fons et origo*[1] of the laws of the land and the basis of legality of the rules of engagement of the Nigerian Federation.

Significant Features of the Nigerian Constitution and Definition of Terms

The Constitution of the Federal Republic of Nigeria opens with a preamble which expresses the solemn resolve of "we the people" of that polity known as Nigeria to employ the principles of Freedom, Equality and Justice as fundamental tools for navigating the vessel of the Nigerian state.[2] It is imperative at this stage to instigate an essential task of proffering definitions or at least attempt an explanation of the concepts of Freedom, Equality and Justice, deliberate insertions by the drafters of the constitution offered as proof of their preference for the advancement of the ideals of good government and welfare of persons in the country. This however constitutes no mean task and if we encounter a difficulty in an attempt or lack of consensus in attaining universally acceptable definitions of these concepts, we ought to take solace in the fact which familiar learning suggests to us that definition of concepts is a task which is not only formidable but one generally unachievable. If the meanings of the words

[1] "A system to survive, must be dynamic. Kelsen's visualization of a system that is dynamic is one in which fresh norms are continuously created on the authority of an original norm. Then the original norm must be all important. That original norm, the highest factor in a hierarchy of norms, the mathematician's H.C.F., is the "*Grundnorm*". The *grundnorm* therefore must have no rule behind it. It is the *fons et origo* – the final norm, one which Salmond (Salmond: Jurisprudence pp47-50) regarded so fundamental as to be termed the legal source. Beyond it, there must no longer be a further enquiry. "It is the alpha and omega" (Esho Kayode, Nigerian Grundnorm, 1986, Nigerian Law Publication, Lagos, p. 36).

[2] In the preamble to the Constitution, the purpose for which the constitution was enacted is stated to be that of: "promoting the good government and welfare of all persons in our country on the principles of Freedom, Equality and Justice, and for the purpose of consolidating the Unity of our people". The preamble constitutes an integral part of the constitution and may assist in the interpretation and application of its various provisions as decided in past cases such as: Onabanjo v Concord Press of Nigeria Limited (1981) 2 NCLR p. 399 and; AG of Ogun State v AG of the Federation (1982) 3 NCLR p. 166.

'freedom' and 'equality' yield to easy designation, the same cannot be said of 'justice'. Ever since the evolution of human society, the question of justice has remained one of abiding interest because the attainment of Justice has remained an issue, which has agitated and still continues to agitate the minds of great thinkers. There had been and there is still a consensus of opinion that justice be enthroned in every society and nation. It is therefore of little wonder that the quest for justice has been as challenging as the Holy Grail[3] and as elusive as the unicorn.[4] Suffice to say that though an attempt at definition seems formidable, we cannot attempt to do justice without a clear theory of what justice is, otherwise, we will certainly do it poorly or not do it at all, or not even know that we are doing it. For Plato, justice is the WILL of the strong and while the strong does what he likes (wills), the weak suffers what he must. Legal theorists and philosophers have identified different aspects of justice ranging from political justice

---

[3] The legend of the Holy Grail is one of the most enduring in Western European literature and art. The Grail was said to be the cup of the Last Supper and at the Crucifixion to have received blood flowing from Christ's side. It was brought to Britain by Joseph of Arimathea where it lay hidden for centuries. The search for the vessel became the principal quest for the knights of King Arthur. It was believed to be kept in a mysterious castle surrounded by a wasteland and guarded by a custodian called the Fisher King who suffered from a wound that would not heal. His recovery and renewal of the blighted lands depended upon the successful completion of the quest. Equally, the self realisation of the questing knight was assured by finding the Grail. The magical properties attributed to the Holy Grail have been plausibly traced to the magical vessels of the Celtic myth that satisfied the tastes and needs of all who ate and drank from them. *www.bl.uk/ onlinegalley/features/mythical/grail.html* [Accessed on 02 August, 2015].

[4] The unicorn is a legendary animal that has been described since antiquity as a beast with a large, pointed, spiralling horn projecting from its forehead. The unicorn was depicted in ancient seals of the Indus Valley Civilisation and was mentioned by the ancient Greeks in accounts of natural history by various writers, including Ctesias, Strabo, Pliny the Younger, and Aelian. In European folklore the unicorn is often depicted as a white horse-like or goat-like animal with a long horn and cloven hooves (sometime, a goat's beard). In the Middle Ages and Renaissance, it was commonly described as an extremely wild woodland creature, a symbol of purity and grace, which could only be captured by a virgin. In the encyclopaedias, its horn was said to have the power to render poisoned water potable and to heal sickness. In medieval and renaissance times, the tusk of the narwhal was sometimes sold as unicorn horn. *http://en.wikipedia. org/wiki/Unicorn# The_hunt_of_the_unicorn* [Accessed on 02 August, 2015].

to economic and/or distinctive justice[5]. However, no matter the characterization of justice, it remains an indelible fact that every modern society prides itself on being founded on the ideals of justice, equity and fair-play, which according to Nigerian constitution, set up the social order upon which the Nigerian nation is founded.[6]

Principles of Federalism

Apart from the social ideals of justice, equity and fair-play, the Nigerian society also adopted for herself, the federal system of government by which: "Nigeria shall be a Federation consisting of states and a Federal capital territory".[7] The choice, adoption and implication of a federal structure of government for Nigeria, is both clear to and deliberate for the promoters of the constitution. The implication of a federal government structure whether in Nigeria or any other jurisdiction is that the constituents of the government and their mode of existence remain both a matter of strict law and practice. Under the existing system therefore[8], whether it is christened a federal, regional/provincial and municipal/local tiers of government, the bottom line rests on the fact that the concept of federalism as a legal and political concept, connotes generally, an association of states, which though formed for certain common purposes[9] retain a large measure of their original independence or autonomy.[10] A federal government structure or a federating union is the exact antithesis of a unified government structure, system or arrangement. Under a federal government system, the idea is that the sovereign power between a central or "federal" legislature on the one hand and a system of

---

[5] Oputa, C.A., *Access to Justice*, a paper delivered at the Silver Jubilee Lecture of the Law Students' Society, University of Ife on 8th May, 1987, p. 1.

[6] See section 17 (1), Constitution of the Federal Republic of Nigeria, 1999.

[7] See section 2 (2), Constitution of the Federal Republic of Nigeria, 1999.

[8] As at the time of the coming into existence of the 1999 constitution and due to its availability, the characteristic nature of the constituents of the Nigerian federation were also mentioned and listed in the law. See section 3 (1) and (6) Constitution of the Federal Republic of Nigeria, 1999.

[9] In the case of Nigeria, see the preamble to the 1999 Constitution.

[10] This much is suggested by the express provisions of section 2 (2) of the 1999 constitution and underscored by the Black's Law dictionary which defines a federation as "a union of states with a central power yielding a true national government possessing sovereignty both external and internal"

local legislature on the other, is apportioned in a written constitution in such a way that each body is sovereign within its own prescribed sphere. That this constitutes the irresistible conclusion is further confirmed by the Constitution where provisions exist for the purpose of creating new states[11]; for the purpose of boundary adjustments of any existing state[12]; and for the purpose of creating new local government[13]. It is instructive that earlier on in section 7, local government system by democratically elected councils is guaranteed under the constitution. It therefore becomes imperative for every state that desires it for reasons it regards as important and compelling, to ensure their existence under a Law[14]. It is this law that will make provisions for the establishment, structure, composition, finance and functions of the provisions of the council[15], subject only to the observance by the concerned state of the provisions of the constitution relating to the procedural rules for the creation of local governments[16]. What comes next is to ask whether in availing themselves of the substantive law clothing them with power to create local governments as contained in the Constitution[17], section 7, Lagos State and all those other states[18] who equally evinced an intention to create local councils within their states, and have even done so, did comply with the mandatory procedural rules contained in the Constitution for creating new local governments in their various states. It is worthy of note that the highest court in the land, the Supreme Court of Nigeria, in its majority verdict, answered the rhetoric question posed immediately above in the affirmative, when it gave judicial affirmation in its

---

[11] See section 8 (1), Constitution of the Federal Republic of Nigeria, 1999.
[12] See section 8 (2), Constitution of the Federal Republic of Nigeria, 1999.
[13] See section 8(3), Constitution of the Federal Republic of Nigeria, 1999.
[14] This refers to a law enacted by the House of Assembly of a state. See section 318, Constitution of the Federal Republic of Nigeria, 1999.
[15] See section 7(1), Constitution of the Federal Republic of Nigeria, 1999.
[16] See section 8(3), Constitution of the Federal Republic of Nigeria, 1999.
[17] See section 7(1), Constitution of the Federal Republic of Nigeria, 1999.
[18] The then former President, Chief Olusegun Obasanjo wrote a letter to on the 8th April 2004 to then Minister of Finance, requesting that the allocation of revenue due to some states from the federation consolidated account be withheld in respect of those states which were categorised as the "offending" states as at the date of the letter namely: Ebonyi; Katsina (governed as at then by the successor to President Obasanjo himself, the Late President Umar Yar'Adua); Nasarawa and Niger).

judgment that under the current Constitution, powers for the creation[19] of new local governments resides in the states of the federation[20].

Pertinent Questions on Fundamental Issues

At this juncture, certain pertinent questions become inevitable, and the conclusions reached by the answers supplied to them, would lead inexorably to some illumination of the discussion. The questions are as on:

(a) whether the National Assembly (hereinafter NASS), is enjoined, without more, to take immediate mandatory steps to make consequential provisions under section 8 (5)[21] of the constitution, with respect to the names and headquarters of local government areas as provided in section 3 (6)[22] and in Part 1 of the first Schedule upon the fulfilment by a concerned State of the transmitting of the "returns" mentioned in section 8 (6)[23] to each House of the NASS;

(b) whether by the neglect, failure or refusal of the NASS to take those mandatory steps under section 8 (5) for the purposes of listing of newly created local government areas as stipulated in section 3 (6), the legality or reality of the existence of local governments created in Lagos state (our case of study) is thereby adversely affected;

---

[19] This power was defined by the Court as "bringing into being, causing to exist".

[20] See *AG Lagos State v AG of the Federation*; Sc. 70/2004.

[21] Section 8 (5) of the Constitution provides: "An Act of the National Assembly passed in accordance with this section shall make consequential provisions with respect to the names and headquarters of States or local government areas as provided in section 3 of this Constitution and Parts I and II of the First Schedule to this Constitution".

[22] Section 3 (6) of the Constitution provides: "There shall be seven hundred and sixty-eight local government areas in Nigeria as shown in the second column of Part I of the First Schedule to this Constitution and six area councils as shown in Part II of that Schedule".

[23] Section 8 (6) of the Constitution provides: "For the purpose of enabling the National Assembly to exercise the powers conferred upon it by subsection (5) of this section, each House of Assembly shall, after the creation of more local government areas pursuant to subsection (3) of this section, make adequate returns to each House of the National Assembly".

(c) whether by the combined effects of sections 2,3,7,8 and 9 of the 1999 Constitution, the Constitution envisages or approves of the prevention or frustration by the NASS of a state's exercise of its powers under the constitution to create new local governments as it desires and sees need for;

(d) whether the NASS (even if it so desires for any reason), can, under the 1999 Constitution venture to create local governments for any state in the federation? (Recall that there had been several "threats" by the House of Representatives in the past made to some states Houses of Assembly, where a "stalemate" has occurred between the executive and legislature in a state[24] to take over the State House of Assembly's legislative functions;

(e) whether in the creation of a new local government within a state of the federation, the NASS can validly and legitimately take in any form—beyond the consequential step allotted to it under section 8 (5)—either or both of the substantive and procedural laws in sections 7 (1)[25] and 8 of the constitution;

(f) whether upon the filing of the 'Returns' to be made by the state as provided in section 8(6), the next step to be taken by the NASS is not without more a happening of the event in section 8 (5) as a direct result of a particular event or situation as provided for in sections 7 (1) and 8 (6) of the constitution. And if so, whether the neglect, failure, or refusal of the NASS to make consequential provisions with respect to the matter in section 3 (6) of the Constitution, being names and headquarters of local governments as provided, is not unconstitutional;

---

[24] For example, sometime ago in Ogun State, during the tenure of then governor, Otunba Gbenga Daniel, when there was a face-off between the executive and the legislature in the state, the then House of Representatives threatened to take over the legislative functions of the State's House of Assembly under the guise of section 11 (4) of the Constitution). It is therefore not far-fetched if the NASS will take it upon itself to establish local government areas for desiring states.

[25] Section 7 (1) of the Constitution provides: "The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall, subject to Section 8 of this Constitution, ensure their existence under a Law which provides for the establishment, structure, composition, finance and functions of such councils".

(g) whether the NASS can by its "unconstitutional act", in refusing to comply with section 8 (5) of the Constitution, prevent or frustrate the exercise of a constitutional power by another unit of the federation; and,

(h) whether the Constitution provides for a two-tier, two-level or two-layer approach to the creation by states of the federation of new local government areas within its domain.

Conceivable Responses

In *AG Lagos State v AG of the Federation*[26], when considering the provisions of the Constitution of the Federal Republic of Nigeria at section 8 (5) thereof, the Supreme Court did appreciate that the role which the National Assembly is expected to play in the process of creating new local government areas by states of the federation, is merely consequential. The Constitution is deliberate in its choice of the word "consequential" and expects it to bear the ordinary meaning ascribed to it in English Language[27]. The Longman Dictionary of Contemporary English defines the word consequential as: "Happening as a direct result of a particular event or situation".

[26] Sc. 70/ 2004

[27] Many principles governing interpretation of the Constitution as the supreme law of the land follow the well-established general principles of interpretation of statutes, and some others developed over the years to complement the widely accepted cannons of interpretation to make the working of the Constitution purposeful, progressive and responsive to the peculiar circumstances of Nigeria. One of such principles of interpretation of the Constitution which was evolved and nurtured by the Courts, is the principle of "Construing words and provisions". The principles states that the maker of any Law be it Constitution or otherwise, does not use any words in vain, nor does he indulge in tautology or in surplussage in the use of the words: See *Tukur v Government of Gongola State* (1989) 4 NWLR (Pt. 117) p. 517; para. A. the provisions of the Constitution ought to be read and interpreted as a whole and related sections must be construed together: See *Broniks Motors Ltd. V Wema Bank Ltd*. (1983) 1 SCNLR p. 296; *Tukur v Government of Gongola State* (1989) 4 MWLR (Pt. 117) p. 517; para. C; *Kalu v State* (1998) 13 NWLR (Pt. 583) p. 531 at 586-587. A provision in a Constitution cannot be read in isolation where such provision is qualified by some other considerations: See *Awolowo v Sarki* (1966) 1 All NLR p. 178; *Okhae v Governor of Bendel State* (1990) 4 NWLR (Pt. 144) p. 327 at p. 403, para F. – Smith, I.O., *The Constitution of the Federal Republic of Nigeria, Annotated*, (1999), Lagos, Eco watch Publications (Nigeria) Limited, p. xxxv.

Therefore, both in the literal and contextual[28] senses, the word "consequential" cannot carry nor be made to import more meaning than it bears nor more weight than it carries. It remains at all times and for all purpose, the happening of an event, which in this case, is the taking of the steps in section 8 (5) by the National Assembly, as a direct result of a particular event or situation, which in this case, is the taking of the steps highlighted in section 8 (3), by a desiring state.

Idea of a Superior National Legislature

The suggestion of an idea of the National Assembly being "senior to all other Legislative Houses of this country" was first hinted at by counsel representing the parties before the court. As attractive as the suggestion may be, it is, with all due respect untenable under the 1999 Constitution. The Constitution was called in aid in other to make this rather very patronizing supposition hold, by making reference to section 4 (5) thereof. However, with both cursory and careful readings of the provisions of the Constitution in section 4 (5) one does not have to endure any tasking bewilderment before recognizing that what section 4 (5) does is to promote the constitutional doctrine covering the field[29] in relation to the items on which both the National Assembly and the Houses of Assembly

[28] The context here, is to apply federalism principles. The federal structure is reflected in the legislative, executive and the judicial arms of government (see Parts IV, V and VI of the Constitution) and none of the three tiers of government shall infringe on the constitutional powers of one another with respect to the constitutional functions of the three arms of government. See Bamidele v Commissioner for Local Government (1994) 2 NWLR (Pt. 328) p. 568 at 586 para. D-F. Smith, I.O., *The Constitution of the Federal Republic of Nigeria, Annotated*, (1999), Lagos, Ecowatch Publications (Nigeria) Limited, p. xxx.

[29] I.O. Smith, *The Constitution of the Federal Republic of Nigeria Annotated,* (1999, Ecowatch Publications Limited) xxx. See also, Constitution of the Federal Republic of Nigeria 1999, s 4(5); By the doctrine of "covering the field" in Nigeria's federalism, where the Federal Government has validly legislated on a matter, any State legislation on the same matter which is inconsistent with the Federal legislation will be void to the extent of the inconsistency: See *Governor of Ondo State v. Adewunmi* (1988) 3 NWLR (Part 82) 280; For the doctrine to be invoked, the Federal Act must bear out the same tenets, intendments or purposes of the State law; the aims and objectives must be exactly the same and not merely be alike for the Federal Act to abrogate a State law: *Chikelue v Ifemeludike* (1997) 11 NWLR (Part 529) 390, 403.

have concurrent legislative powers[30]. The provisions of the Constitution in section 4 (5) does not in any way constitute any assertion of seniority by one legislature, the National Assembly, over another, the States Houses of Assembly. To follow that road—as charted by the Supreme Court will be tantamount to discounting the "equality" principle in the preamble to the Constitution of the Federal Republic of Nigeria, 1999, and upholding the triumph of the "discriminatory" principle between the arms of government in the interpretation of the letters of the Constitution. This 'conclusion' is further vindicated by recalling the hallowed observations of a former jurist of the Supreme Court to the effect that the Supreme court is not the last court in the land because it is constituted by "infallible" people (justices), but that they, the people (justices of the Supreme Court) are "infallible" because the Supreme Court is the last court in the land beyond which no appeal lies; subject only in certain circumstances, to the exercise of the President's and a Governor's prerogatives of mercy[31]. Commending the application of the idea behind the statement of the revered late jurist to those who will be saddled with the interpretation of the Constitution, it is a view canvassed in this study, that all the arms of government in the federation should be viewed as having complementary roles to execute in accordance with the powers granted to them in the Constitution, by "we the people" of Nigeria. This, rather than the attempt to pursue the 'superiority theory' which perceives the elevation of one tier of government or one organ of government or one arm of government above another tier, organ, or arm, in the federation should be the focus of operators of the nation's constitution. It is the duty of the

[30] It is also noteworthy that nowhere in the 30-section Concurrent list does the issue of creation of local government feature, in other for the NASS to take advantage of a superiority of legislative competence over a State legislature. Indeed, even under the Exclusive Legislative List, item 32, in due deference to the Constitution, while reserving for the exclusive legislative competence of the NASS, the "Incorporation, regulation and winding up of bodies corporate, has ceded to State legislatures, the incorporation, regulation and winding up of other corporate bodies, being, co-operative societies, local government councils and bodies corporate established directly by any Law enacted by a House of Assembly of a State".

[31] The jurist to whom the statement was credited was the Late Chukwudifu Akunne Oputa (JSC).

Supreme Court to advance these hallowed principles of federalism in the determination of disputes brought before it by contending parties.

Status of the Letter of the President to the Governor of Lagos State

In the course of the 'face-off' brought about by the insistence of Lagos State, to carry through its decision to establish more local governments for its residents, the president of the federation, was alleged to have written a letter to the governor, requesting the latter to reverse the State's decision to establish the local councils or face the consequences that may attend a refusal to comply with the president's directives. To the extent that the letter constitutes an avenue for communication between heads of units in a federation, saddled with different responsibilities in the polity under the constitution, the ideas of a letter from the president to the Lagos State governor or to any governor at all in the federation, or between the federal government and a state government, is a welcome development. If the letter—by one—is for the further salutary purpose of calling the attention of the other to a perceived anomaly or wrong or for the purpose of promoting the amicable settlement of a matter, such a letter is more welcome. Anything apart from this, will constitute the purported letter into a declaration of dispute and an attempt to undermine the provisions of the constitution. Such a letter, under whatever guise, will further usurp the constitutional role reserved for the Supreme Court in accordance with section 232 (1)[32] thereof. If any step is contemplated, taken or preferred by any person, tier, organ or authority of government, for the resolution of a dispute outside the ambit or purview of the Constitution, such a step may be tantamount to levying war against the Federation or a part of it.

Citing an Analogy

If there still exists any iota of doubt that the steps attributed to the National Assembly in respect of sections 3 (6) and 8 (5) is no more

[32] Section 232 (1) of the Constitution provides: "The Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between the Federation and a State or between States if and in so far as that dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends."

than consequential and/or ceremonial, such a doubting observer is invited to consider the Bakassi issue. In this analogy, the Federal Government had earlier submitted to the adjudicatory jurisdiction of the World Court. At the end of proceedings at the World Court, judgment was entered against Nigeria with the implication that certain parts of the territory of the nation will be ceded to Cameroon. If this judgment must be carried out, it will require the adjustment of the boundary of Nigeria and the amendment of the list of local government areas which were hitherto existing in the part of the country that was ceded. The local government areas that will be ceded to Cameroon would have formed part of the list referred to as existing in section 3 (6) of the Constitution and more particularly listed in the second column of Part 1 of 1st Schedule to the Constitution. It is unlikely, that since then and up to the time of this article, the National Assembly has passed an Act in accordance with section 8 (5) to reflect this reality. In a hypothetical dispute between the State of Cross Rivers—where Bakassi and the affected local government areas are situated—and the Federal Government, whereby the former is contesting the exercise of powers by the latter in respect of the ceding of a part of the former to Cameroon, can the Supreme Court in all good conscience declare as invalid the steps taken by all concerned parties, simply on the reasoning of the failure by the National Assembly to take steps to make consequential provisions with respect to the names and headquarters (whether by addition thereto or deletion there from) of the local government areas (which fall within Bakassi area in Cross River state), as provided for in the Constitution and in Parts 1 and 2 of the first schedule to the constitution?

Judicial Control of Public Institutions and Authorities

There is no doubt that the National Assembly is a public authority. This assertion is further underpinned by the provisions of section 13 under Chapter 2 of the 1999 Constitution. Both Houses of the National Assembly belong to the nation of Nigeria and to the people at large and the National Assembly is also the institution that affords an opportunity for giving representation to the component units of the federation through its bi-camera

legislature[33]. Furthermore, the National Assembly is regarded as a public institution under the Constitution. Being a public institution therefore, it is subject to the judicial control by the courts established by the Constitution. Where a public institution or authority is under a duty to do or refrain from doing some act, and any person suffers a particular injury peculiar to himself owing to the breach of that duty, he may bring an action unless this is expressly or impliedly excluded by statute[34]. By the 1999 Constitution, the National Assembly is the authority saddled with the duty of exercising legislative powers in other to observe and apply the provisions of Chapter 2 of the Constitution[35]. Therefore, the Federal Republic of Nigeria being a state based on the principles of democracy and social justice is bound by the constitution neither to deny justice to anybody nor to delay anybody in obtaining justice. If therefore there is no other means of obtaining justice, the *Writ of Mandamus* is granted to enable justice to be done. The order of mandamus may be issued to any person or body commanding him or them to carry out some public duty. It constitutes a residuary remedy of use where no other remedy is provided by statute. Since the Supreme Court made an

---

[33] The Constitution established a bi-camera legislature at the Federal level under the name of the National Assembly comprising of the Senate and the House of Representatives: see section 47 of the Constitution of the Federal Republic of Nigeria, 1999. A bill may originate in either of the two Legislative Houses and where it is passed by the House in which it originated, it shall be sent to the other House to be passed: see section 58 (2) and (3). The essence of having a bill passed by the two Houses is to ensure adequate consultations and deliberations by the representatives of the people and to have vital interests represented. It is also a check against the despotism of a single chamber and affords an opportunity for giving representation to the component units of the Federation. Smith, I.O., *The Constitution of the Federal Republic of Nigeria, Annotated*, (1999), Lagos, Ecowatch Publications (Nigeria) Limited, p. xxxii.

[34] Section 6 (6 (b)) of the Constitution provides: "The judicial powers vested in accordance with the foregoing provisions of this section (b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person".

[35] This chapter is captioned 'Fundamental Objectives and Directive Principles of State Policy'. Even though the provisions of section 13 has not made Chapter 2 justiciable, where provisions of the constitution defines a certain course of action or enshrine certain rights, these provisions must be applied without any inhibition emanating from Chapter 2. See Archbishop Anthony Olubunmi Okogie v A.G. (Lagos) (1981) 2 NCLR 337.

allusion to the possible invocation of the prerogative action of mandamus in its minority judgment, it will not be presumptuous therefore to recommend its consideration and utilization to concerned parties in this instance.

Rendering the Returns in Section 8 (6)

The pertinent question seems to be to enquire whether section 8 (6) was complied with by the government of Lagos State in concluding the steps began in section (3). The enquiry becomes imperative in other to push the ball to the court of the National Assembly as envisaged in section 8 (5) for carrying out the mandatory observation of the consequential provisions with respect to the names and headquarters of local government areas—which are items expected to feature in the returns—as provided in section 3 and Parts 1 & 2 of the 1st Schedule of the 1999 Constitution.

Records available indicate that due 'returns' were prepared in detail by Lagos State Government specifying the process enumerated in the constitution with the identities of the newly created Local Government Areas. The 'returns' which were rendered to the National Assembly, indicated the Wards of the new Local Government Areas and these were delineated by the Lagos House of Assembly, and due information extended to the Lagos State Independent Electoral Commission. The implication of the above is that having taken the necessary steps prescribed in the Constitution which a concerned State such as Lagos State is expected to have taken, the National Assembly had no choice in the matter. It may however do either of two things: take the steps contained in **section 8 (5)** voluntarily or be compelled by the process of law to take those steps.

Conclusion

Nigeria remains a federation under the 1999 Constitution. The federation which consists of 36 states and the Federal Capital Territory presents opportunities for the bringing into being, more states[36] and/or more local government areas.[37] The federal structure recognizes 3 tiers of government which are: the Federal,

---

[36] The agitations by proponents of creation of more states is evergreen and they are supported in their quest by section 8 (1), (5) of the Constitution.

[37] See also section 8 (3), (5) of the Constitution.

State and Local Governments; each tier with its prescribed constitutional mode of creation and peculiar administrative structure, thereby taking government to grassroots level for effectiveness and development but with necessary complementarities and cooperation between the tiers. The federal structure is also reflected in the three arms, and whether regarding the tiers or the arms, none shall infringe on the constitutional powers of another with respect to the constitutional function of the three arms of government, that is, the legislative competence of the National Assembly and the State Houses of Assembly are clearly spelt out in the constitution. Furthermore, no authority or person shall make laws on any item reserved for the Local Government to legislate on in the 4th schedule to the Constitution pursuant to section 7 of the Constitution.[38] Compliance with constitutional provisions concerning the legislative powers of the National Assembly or the State Houses of Assembly is subject to the jurisdiction of the courts of law or judicial tribunal established by law and neither the National Assembly nor the State Houses of Assembly is competent to enact any law ousting or purporting to oust the jurisdiction of such courts or judicial tribunal except as provided for and permitted in the Constitution itself.[39] Disputes between the federation and a state or between states involving any question on which the existence or extent of a legal right depends shall be subject to the original jurisdiction of the Supreme Court[40]. In order to ensure effective federalism, amendment of the Constitution has been made so rigid that neither the federal authority nor any unit thereof has the power to change the constitution whimsically and the procedure for the amendment of the constitution is one in which both the federal authority and the units have defined roles to play. In the final analysis, the controversy about states' power to create new local government areas turns on the concept and application of the principles of federalism, the theory of supremacy of the constitution and the doctrine of sovereignty in a federation. It is a task which this study submits to be directly within the ambits of the adjudicatory competence of the Supreme Court. When therefore the court is beckoned upon to play its constitutional role

---

[38] See Bamidele v. Commissioner of Local Government 1994 2 NWLR PT 328 p. 568

[39] See sections 4 (8), 143 (10) and 188 (10) of the 1999 Constitution.

[40] See Section 232 (1), Ibid.

to assume jurisdiction, the court will neither balk at nor make trivia of this solemn responsibility.