

## THE UNCONSTITUTIONALITY OF THE NIGERIAN FINANCIAL INTELLIGENCE UNIT'S DIRECTIVES ON LOCAL GOVERNMENT FUNDS\*

### Abstract

*The granting of financial autonomy to the local governments in Nigeria through the operation of the newly established Nigerian Financial Intelligence Unit (NFIU) is, perhaps, the first time genuine and creative step is being taken in the fight against corruption and in ensuring the existence of local government as a third tier of government. However, no matter how laudable such a policy directive may be, the truth is that it is patently illegal and unconstitutional as it is contrary to the positions of the 1999 Constitution. The 1999 Constitution of Nigeria under section 7(1) guaranteed the existence of the local government as a tier of government but the same Constitution did not actually guarantee the financial autonomy of local government by creation of the State Local Government Joint Account under section 162 where local government allocations are managed by the State government. The Nigerian Financial Intelligence Unit, by its 2019 guideline/directives on local government funds purports to bar state governments from directly accessing funds in the State Joint Local Government Account. The paramount consideration is whether it has powers to do so. The research employed a doctrinal research method and relied on primary sources and secondary sources such as statutes, case laws, textbooks, internet sources and journals and qualitative analysis for the development of the work. It was found that local government is still considered as an extension of the state's ministry. The study recommends that there is urgent need to amend section 7 and 162 (3) (4) (6) (7) and (8) of the 1999 Constitution of Nigeria which undermine the autonomy of local government as true tier of government in Nigeria so as to enforced NFIU directives on the issue of local government funds.*

**Keywords:** Unconstitutionality, Financial Intelligence Unit, Directives on Local Government Funds, Nigeria

### 1. Introduction

Local government is a political division of a nation or (in federal system), state, which is constituted by law, and has substantial control of local affairs, including the powers for prescribed purposes. The governing body of such an entity is elected or otherwise locally selected.<sup>1</sup> Local government exist to address fundamental problems they are most suited to tackle. This is to the effect that the local needs and taste of residents of the local areas are most time at variance with those of the state and federal government. Fundamentally, Nigeria has three tiers of government which are the federal, state and local government which are interdependence in power sharing and revenue allocation so as to ensure the autonomy of each tier of government. The Fourth Schedule of the 1999 Constitution of the Federal Republic of Nigeria (as amended) dealt with the autonomy of the local government and proceeded to provide that 'Local government is the third tier of government in Nigeria and enjoy the freedom of action to enable it perform its constitutional functions unfettered and energize sustainable national development from the grassroot'<sup>2</sup>. Also, section 7(1) of the 1999 Constitution provides that '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 the constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance, and functions of such councils'<sup>3</sup>. In *Dogari & Ors v Attorney General of Taraba State*<sup>4</sup> where the plaintiffs were elected as Chairman and Councillors of the Karim Lamido Local Government council in Taraba State for a term of 3 years. Two years into the tenure, the defendant dissolved the council on grounds of gross misconduct based on recommendation of the legislative arm and backed by amendment by the later of the Local Government Law, Number 2 of 2000, which empowered the Governor to dissolve the council on grounds of gross misconduct. In determining S.7 (1) of the 1999 Constitution and the provision of Local Government law Number 2 of 2000 of Taraba Sate, the Court of Appeal held:

Although it is within the legislative power of a State House of Assembly to make a law to regulate a local government council in the state plagued with crisis or make a law to prescribe for event upon which happening a local government council is dissolved or the chairman or vice-chairman of a local government council removed or vacates his office, any law made by the House of Assembly which provides for nomination of membership of a councillor or appointment of an administrator or caretaker committee to replace democratically elected council; is inconsistent with the clear and unambiguous provisions

---

\*By **Fidelis C. UWAKWE**, Lecturer, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus. Email: - uwakwefidelis@yahoo.com. Phone: 08033921593; and

\***William Amechi CHUKWUMA**, Lecturer, Chukwuemeka Odumegwu Ojukwu University, Igbariam Campus. Email: willychuma@gmail.com. Phone: 08037158467.

<sup>1</sup> Federal Republic of. Nigeria: *A Hand Book on Local Government Administration in Nigeria*, Abuja: The Presidency (1992)

<sup>2</sup> Hereinafter referred to 'as the 1999 Constitution'.

<sup>3</sup> Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>4</sup> (2000) ALL FWLR (Pt. 603) p.1786

of S.7 (1) of the Constitution of the Federal Republic of Nigeria, 1999 which guarantees democratically elected local government councils.

However, local government autonomy is not absolute<sup>5</sup>. The 1999 Constitution recognised the local government as the third tier of government. However, the relationship between the central and local government is more pronounced in matters of fiscal relationship. Thus, Ezeani notes that ‘Since 1976, the federal government had recognised that the lack of adequate finance and subventions was one of the defects responsible for the inefficiency and collapse of the pre-1976 local government. Adequate provisions were therefore made both in the 1979 and 1999 Constitutions for statutory allocation of fund to local governments’<sup>6</sup>.

In addition to the fiscal relations, implementations of some policies and projects of the federal government therefore strengthen the local government through personnel management and capacity building. In Nigeria, federal government through the National Assembly makes consequential provisions for creation of new local government areas. This is specified in section 8(5) of the 1999 Constitution. In *A.G Lagos State v A.G Federation*<sup>7</sup> Lagos state and other states in the federation, pursuant to the provision of the Constitution proceeded to create new Local Government Areas. The President viewed that the provisions of section 8(5) of the 1999 Constitution which required the National Assembly to make consequential provisions by an Act with respect to the names and headquarters of the new local government areas had not been complied with. Consequently, the President directed that henceforth no allocation from the federation account should be released to the local government councils until they revert to the constituent local government areas specified in Part 1 of the First Schedule to the 1999 Constitution. Another important aspect of the relationship between the federal and local government is administrative control. A typical example of this control is appointment of certain local authorities such as chief constables and magistrate that require the approval of the appropriate federal authority.

The constitutionality of the operation of the state/ local government joint account without the existence of duly elected local government officials can only bring to the limelight at the exploration of the relationship between the State and Local government respectively. The nature of the state/local relations varies with the system of government and country. The primary responsibility over local government resides with the state government. Although the federal government has some relations and support for local government legally approved by the operating system but the residential powers over local government falls on the state. In Nigeria, the state government has the primary responsibility for creation of local government. Under the 1999 constitution of the federal republic of Nigeria<sup>8</sup> the government of every state shall subject to section 8 of its constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance, and functions of such councils. The reference often made about the local government as a mere appendage of the state government is a function of the perception of the state which sees the fortunes of the local government as the necessary bailout funds that must be used with impunity. The creation of the State Joint Local Government Account by section 162(6) of the 1999 Constitution has left Local Government Councils in Nigeria worn-out as they depend completely on the State Governments for funds needed for their development. It is important to note that the allocations of Local Government Funds to the States are meant ‘for the benefit of their Local Government Councils.’<sup>9</sup>

The States are trustees to local government revenue allocation and they cannot deal with such funds in a manner which is inconsistent with the rights of its beneficiaries<sup>10</sup>. In *A.G Abia State v A.G Federation*<sup>11</sup> the Court held that Section 162 (6) of the Constitution enjoins each State to maintain a special account to be called ‘State Joint Local Government Account’ into which shall be paid all allocations to the local government councils of the state from the Federation Account and from the Government of the State’. Section 162 (6) of the Constitution is a mandatory provision which all the State Government must comply with in connection with all the financial allocations in favour of Local Government Councils within the State. In order words, the State Joint Local Government Account will be made up of allocations from the Federation Account and from the Government of the State. There is a current imputation by the federal government under the leadership of President Muhammadu Buhari that the local government will start receiving federal allocation directly from the federal government as from June 1, 2019. Therefore, the NFIU order which takes effect from June 1, 2019 is a decisive step towards

---

<sup>5</sup> *Ibid*

<sup>6</sup> Ezeani, O.E., *Local Government Administration*. Enugu: Zik-Chuks Printing Press, 2004

<sup>7</sup> (2005) ALL FWLR (Pt. 244) p.85

<sup>8</sup> Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>9</sup> Section 162 (5) of the 1999 Constitution.

<sup>10</sup> See *AG. Federal v Abia State Government & 36 Ors*, where the Supreme Court held the Federation Account to all the beneficiaries.

<sup>11</sup> (2006) 16 NWLR (pt. 1005) p.265.

ensuring financial autonomy for the emasculated 774 local governments in the country. No doubt, the NFIU's action must have been prompted by the misappropriation of the funds allocated to the local councils by the state governments through the State Joint Local Government Accounts (SJLGA). The NFIU's action was also necessitated by the threats from international financial watchdogs to sanction Nigeria as a result of abuse of the local governments' funds. This is contrary to s. 162 (5) of the Constitution of Nigeria, 1999, which provide that 'The amount standing to the credit of local government councils in the Federal Account shall also be allocated to the States for the benefit of their local government council on such terms and in such manner as may be prescribed by the National Assembly'.

In contemporary Nigerian democracy, there has been deliberate attempts and exercise of power by the State Governors to often appoint local government caretaker committee as against the system of duly elected local government chairman and counselors as provided under s.7(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). This usurpation has relegated the local government relevance as a separate tier of government to the background. In fact, it appears there is no more democratically elected local government system in Nigeria. What is obtainable is but a mere extension or appendage of the State government at the grass root level due to the outright creation of the State-local government joint account. The third tier of government, which is recognized by the 1999 Constitution, has been bastardized and rendered impotent by state governors throughout the country. To free the funds of local governments and make it functional again necessitated the directives of NFIU under consideration. However, laudable this directive might be, it runs contrary to the provisions of the Constitution and therefore, cannot stand the test of time. Nigeria operates constitutional democracy. Thus, any action taken by government or its agency as in this case must be in line with the constitutional provision.

## **2. The Legality of NFIU Directives on Local Government Funds and the 1999 Constitution of Nigeria**

The Nigerian financial Intelligence Unit (NFIU) is the Nigerian arm of the global financial Intelligence Unit (FIU). Domiciled within the Economic and Financial Crimes Commission (EFCC), as an autonomous unit, the setting up of the NFIU is part of the efforts of the Federal Government in combating money laundering, and financing of terrorist activities in Nigeria. The establishment of the NFIU is indeed a precondition for the removal of Nigeria, from the Financial Action Task Force (FATF) list of non-cooperative countries and territories (NCCTs). To midwife the birth of the Unit, a 10-man Technical Committee made up of representatives from the CBN, NDIC, the private sector, a police officer together with an employee of EFCC was constituted far back in October 2003 to develop a comprehensive plan for its establishment. The activities of NFIU are covered under the NFIU Act 2018 and Money Laundering (Prohibition) Act 2011 (as amended) in 2012. The NFIU Act of 2018, establishes the NFIU a central body in Nigeria responsible for receiving, requesting, analysing and disseminating financial intelligence reports and other information to law enforcement, security and intelligence agencies and other relevant authorities. The core role of the NFIU is that it serves as the country's central agency for the collection, analysis and dissemination of information regarding money laundering and the financing of terrorism. The NFIU released the guideline at a crucial meeting with banks executive in Abuja. In a statement titled 'Guidelines To Reduce Vulnerabilities Created by Cash Withdrawals from LG Funds throughout Nigeria, Effective 1st June, 2019' signed by Ahmed Dikko, NFIU acting spokesman, NFIU is ready to tackle money laundering, terrorism, proliferation of weapon and terrorism financing. One of the principal reasons for the NFIU Act is that:

Nigerian state governors created a governance debacle for the local governments, introduced questionable creation of joint state and local government account, serially fritter local government funds for personal uses thereby starving them (LGAs) of needed funds to finance developmental projects. There is hardly any local government in Nigeria that embarks on capital projects beside payment of salaries and allowances. In short, local government administration is dead in Nigeria<sup>12</sup>

One of the highlights of the guidelines is the summary abolition of joint account system. According to the statement, 'To be precise, with effect from 1st June, any bank that allows any transaction from any local government account without monies first reaching a particular local government account will be sanctioned'. 'In addition, a provision is also made to the effect that there shall be no cash withdrawal from any local government for a cumulative amount exceeding N500,000:00 per day. Any other transaction must be done through valid cheques or electronic funds transfer', it stated. According to NFIU, 'cash withdrawal and transactions of the State, Joint Local Government Accounts (SJLGA) poses biggest corruption, money laundering and security threats at the grassroots levels and to the entire financial system and the country as a whole, the NFIU decided to uphold the full provisions of Section 162 (6) (8) of the 1999 Nigerian Constitution as amended'. The Section partly states that, 'The amount standing to the credit of local government councils of a state shall be distributed among the local government councils of that state'. According to Agbakoba, SAN:

---

<sup>12</sup>Omach, S. 'NFIU and Local Government's Financial Autonomy,' <http://nigerianpilot.com/nfiu-and-local-governments-financial-autonomy/> accessed march 3, 2020

NFIU has technically no power to monitor and supervise local government funds but it is possible to stretch their mandate and say the interest is to keep an eye for money laundering and related financial misconduct. Whatever is the nature of power possessed by NFIU, local government funds are in the hands of unelected and often unaccountable people who have received trillions of Naira with absolutely nothing to show for it.<sup>13</sup>

By creating a 'State Joint Local Government Account,' the Constitution completely puts the LGAs at the mercy of greedy and rampaging states. To underscore state's sovereignty over LGAs' finances, section 162(7) sounds the death knell by providing that 'each state shall pay to the Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly. Even when the amount finally grudgingly and tortuously wangles its way into the state, the House of Assembly of that state again ambushes the miserly remnants of funds as section 162(8) of the same Constitution laconically admonishes that 'the amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that state on such terms and in such manner as may be prescribed by the House of Assembly of the State.' Such is the sorry state of affairs that one may be tempted to swallow the attractive bait of the NFIU to monitor Local Government Councils' allocations. Thus, Ozekhome SAN, stated:

No matter how laudable such a policy directive may be, the truth is that it is patently illegal and unconstitutional. Section 1(1) and 1(3) jointly make such a step null and void and of no effect whatsoever, since it is a direct affront to the above clear provisions of the Constitution. The answer is an immediate amendment of section 162 of the Constitution to grant the States the much needed autonomy of having direct access to federal allocations on first line charge like the Judiciary, so as to break their asphyxiating umbilical cord from the apron strings of strangulating states. For now, the NFIU will be acting illegally and unconstitutionally to tamper with the mode and manner money is allocated to states and how the states distribute them. We operate a constitutional democracy where every step taken by government must enjoy constitutional imprimatur.<sup>14</sup>

The Nigerian Financial Intelligence Unit, by its 2019 guideline on local government funds purports to bar state governments from directly accessing funds in the State Joint Local Government Account. The paramount consideration is whether it has powers to do so. The Constitution of the Federal Republic of Nigeria 1999 (as amended) makes clear provisions for the financing of local government councils particularly in Sections 7(1), (6) and 162(3)-(8) Akinlowan, SAN stated:

What the NFIU now seeks to do by its guideline to wit, barring the State Governments from accessing funds which the Constitution grants them power not only to access but to distribute, is unconstitutional, their guidelines are Void to the extent of such inconsistency with the constitution. More so, the law is trite that a body cannot act beyond the Act establishing it. Sections 3 and 4 of The NFIU Act clearly outlines the powers and functions of NFIU which are restricted largely to collection, analysis and distribution of financial intelligence, advising agencies on prevention of money laundering, financing of terrorism and proliferation of weapons of mass destruction as well as monitoring suspicious accounts. As seen from the provisions above, no powers are given to it to regulate the distribution of funds at any level of government. It is simply an intelligence gathering agency. In conclusion, the NFIU guidelines are unconstitutional and ultra vires. Their powers as granted by their enabling Act.<sup>15</sup>

While the intendment of the guideline is understandable which is to make local government financially autonomous, the means adopted is rather draconian and may not survive judicial challenge. We cannot criminalize legitimate exercise of state governance powers on account of abuse of the powers by resort to federal paternalism. Functionaries of State Government who actually process and release funds from government accounts do not enjoy immunity. They can be proactively checkmated and prosecuted for breach of financial guidelines operational in handling revenue of State and Local Government. The *Kuforiji v. FRN*<sup>16</sup> case of the Supreme Court settles the point that money laundering by even a speaker of State House of Assembly by handing cash above lawful limit, is a strict liability offence. Furthermore, the banking institutions which warehouse the FAAC allocations are smarter targets which can also be restrained to frustrate abuses without breaching the

---

<sup>13</sup> Ojelu, I. and Anaba, H. 'Lawyers divided over NFIU directive on LG fund'. *Vanguard*, May 23, 2019. <https://www.vanguardngr.com/2019/05/lawyers-divided-over-nfiu-directive-on-lg-fund/> accessed March 3, 2020.

<sup>14</sup>Ojelu, I. and Anaba, H. 'Lawyers divided over NFIU directive on LG fund'. *Vanguard*, May 23, 2019. <https://www.vanguardngr.com/2019/05/lawyers-divided-over-nfiu-directive-on-lg-fund/> accessed March 3, 2020.

<sup>15</sup>Ojelu, I. and Anaba, H. 'Lawyers divided over NFIU directive on LG fund'. *Vanguard*, May 23, 2019. <https://www.vanguardngr.com/2019/05/lawyers-divided-over-nfiu-directive-on-lg-fund/> accessed March 3, 2020.

<sup>16</sup> (2012) FHC, LA, p. 40.

constitution. They are totally subject to NFIU and CBN regulators in handling public funds deposited with them. NFIU guidelines is to the effect that they are apparently harmonious with the current battle against corruption especially as they relate to frustrating the capacity of local government officials to loot allocations or state governors to divert local government funds. On this score, the end appears noble and ought to be supported. But it is patently unacceptable for the NFIU to adopt the Machiavellian ethos of the end justifying the means through its usurpation of the constitutional duties of states and local governments in S. 7 (6) (a) (b) and S. 162 (5) & (6) of the 1999 Constitution, amongst other sections.

### **3. Local Government as an Appendage of the State Government under the 1999 Constitution of the Federal Republic of Nigeria**

There is no doubt that the local government in Nigeria have assumed a position of crucial importance in the nations attempt at building a representative and sustainable political system based on democratic culture of transparency, accountability and efficient management of resources<sup>17</sup> According to the 1998 local government yearbook, most of the transformations in the political system over the past two decades almost invariably had the reform of the local government as a key turning-point. An indication that successive governments have rightly perceived and recognized local government as the key stone upon which a desirable political system should be built. However, the 1999 Constitution of the Federal Republic of Nigeria made efforts to retain the gains of the 1976 local government reform. For instance, s. 7(1) stated that:

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 provided for the establishment, structure, composition, finance, and functions of such councils<sup>18</sup>.

Although from the above provision, the autonomy of the local government is intended by the Constitution but subsequent provision under s.162 of the Constitution of Nigeria, 1999 have made local government to be a mere appendage of the State government without financial autonomy. The supremacy of the State government over local government is emphasized by *Government of Awka Ibom State v Umah*.<sup>19</sup> In this case, due to crisis in the running of Ini Local government council of Akwalbom State, the Governor of the State through the Secretary to the State Government issued a press release dissolving the local government council and set up a caretaker committee to replace the elected officers. The respondent filed an action in court challenging the acts of the State government. The matter proceeded to the Court of Appeal. The Court held that although the word dissolution is not in the section 7(1) of the 1999 Constitution, the House of Assembly which has the powers to make laws to regulate the affairs of a local government council, can make a law for the dissolution of erring local government council and for bye election to prevent chaos and disorder. Guaranteeing the system of local government councils under the Constitution means that the local government council is dissolved and a bye-election is ordered. It will be otherwise if the council is dissolved and a caretaker committee is appointed in its place.

Similarly, in the case of *A.G Abia State v A.G Federation*<sup>20</sup> where in determining of the suit before it, the Supreme Court considered the provisions of sections 4, 7, and 162 of the Constitution of the Federal Republic of Nigeria, 1999. The Court held that by the combined effect of section 7(1) and 197 and items 22 of the Second Schedule Part 1, the Constitution intends that everything relating to Local government be in the province of the State Government rather than that of the Government of the Federation. The minor exception is to be found in item 11 of the Concurrent Legislative List where power is given to the National Assembly with respect to registration of voters and the procedure regulating elections to local government councils. There is also pursuant to section 7(6) (a), power to make provisions for statutory allocation of public revenue to local government councils in the federation. Other than the above, there is no provision in the Constitution empowering the National Assembly to make laws affecting local government. While section 7(6) (a) anticipates allocation of public revenue to the local government councils within the provision of section 3(6) and the Local Government Councils enumerated in Part 1, First Schedule to the Constitution, Section 7(6) (b) enjoins or empowers the House of Assembly of a State to make such allocation to the councils within the State. However, the intendment of the provisions in the 1999 Constitution is to grant power and autonomy to a State Government over Local Government Councils in a State, but in the case of Local Government, the fiscal relationship with the State Government merely subordinated Local Government Councils to a State Government. In the instant case, the National Assembly by enacting the 2005 Act into law in relation to States had unwittingly engaged in a cause that is a hindrance to the autonomy granted a State Government in its power to control the Local Government Council. An obvious exception to the above is

---

<sup>17</sup> Igwe, O. 'Federal-State Government Relations Under the Tripartite Presidentialism' Paper, presented at Three-Day Workshop, 19-21 February, 2003 at Modetel, Enugu, 2003

<sup>18</sup> Section 7 (1) of the 1999 Constitution of the Federal Republic of Nigeria

<sup>19</sup> (2002) FWLR Pt.110 pg 1793.

<sup>20</sup> (2006) 16 NWLR Pt. 100) 265/ (2006) ALL FWLR Pt.338 604.

that the State government cannot dissolve democratically elected local government executives unless in cases of crisis and where such is done, it is unconstitutional to replace them with caretaker committees or administrators. In *Akpan v Umah*<sup>21</sup> it was held that although it is within the legislative power of a State House of Assembly to make law to regulate a Local government Council in the State plagued with crisis or to make a law to prescribe for an event upon which happening a Local Government is dissolved or the Chairman or Vice Chairman of Local Government Council is removed or vacate his office, any law made by the House of Assembly which provides for nomination of membership of a Council or appointment of an Administrator or Caretaker Committee to replace a democratically elected council is inconsistent with the clear and unambiguous provisions of section 7(1) of the 1999 Constitution which guarantees democratically elected Local Government Councils and is therefore unconstitutional to the extent of the inconsistency. The reference often made about the local government as a mere appendage of the State government is a function of the perception of the State which sees the fortunes of the local government as the necessary bailout funds that must be used with impunity<sup>22</sup>.

Originally, local government maintains fiscal relationship with the higher tiers of government which a careful study shows that independent of the Local government is not entirely guaranteed under the law. For instance, the State government shall: -

- (a) allocate 10% of its internally generated revenue to the local government within the State;
- (b) enact, through the State House of Assembly, a law providing for the structure, composition, revenue, expenditure and other financial matters, staff, meeting and other relevant matters for the local government in the State provided such a law is not in conflict with the provisions of the Constitution or any existing Federal legislation<sup>23</sup>.
- (c) establish a Joint Planning Board, through a law enacted by the State House of Assembly to require each within the state to participate in the economic planning and development of the local government area<sup>24</sup>.
- (d) establish the office of the State Auditor-General for Local Governments for enhanced public probity and accountability at the local government within the State; and
- (e) Offer advice, assistance and guidance (but not control) as and when necessary to local government in the State.

On the other hand, the Federal Government shall exercise statutory responsibility over the following matters;

- (a) creation of new local government<sup>25</sup>;
- (b) statutory allocation of revenue to the local government from the federal through the State<sup>26</sup>
- (c) establishment of the Code of Conduct Bureau<sup>27</sup> and the Code of Conduct Tribunal as a watchdog over the activities of Public officers;
- (d) establishment of the National Electoral Commission for the purpose of organizing democratic elections at all level-federal, state and local<sup>28</sup>; and
- (e) exercising through laws passed by the National Assembly and assent by the President of the Federal Republic of Nigeria unfettered powers to make laws for the Federation or any part thereof, provided that it is within its power provided in the Constitution.

Fundamentally, in order to minimize the impact of conflict in the relationship between the State and the local government, the constitution provided that 'any bye-law passed by a local government shall be void to the extent of its inconsistency with any law validly enacted by the state in which it is situated just as any state law shall be void, to the extent of its inconsistency with any Acts validly made by the government of the federation'. The constitution equally cautioned that the executive powers of the chairman of local government shall be so exercised as not to impede or prejudice the exercise of the executive powers of the federation or of a state in which the local government area concerned is situated or to endanger the asset or investments of the federation or of the state government in the local government area. It is therefore to be noted that from the nature of the relationship between the State and the Local government, the second tier of government has not hidden its desire to exercise maximum control over local governments. This control is normally exercised through the control of fund or outright withholding of same. At the heart of the erosion of the third-tier status of the local government is the 1999 Constitution which, in its provisions, encourages the subordination of the local government to the whims and caprices of the federal and state governments. For instances, by empowering the State to determine the

<sup>21</sup> (2002) 7 NWLR Pt. 767 701.

<sup>22</sup> Obikeze, O.S.A & Obiora, C. A, *Local Government Administration in Nigeria: Theory and Practice*. ABIMAC publishers, 2012.

<sup>23</sup> Section 7(1) of the 1999 Constitution of Nigeria.

<sup>24</sup> Section 7 (3) of the 1999 Constitution of Nigeria.

<sup>25</sup> Section of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>26</sup> Section 162 (3) of the 1999 Constitution of the Federal republic of Nigeria.

<sup>27</sup> Section 153(1) (a) of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>28</sup> Section 153 (1) (f) of the 1999 Constitution of Nigeria.

composition and structure of the Local government and the existence of the State-local government joint account which the State government manages on behalf of the Local government<sup>29</sup>. Therefore, the amendment of the Provisions of the Constitution relating to local government councils need urgently be amended to rescue the local government councils from the shackles of the state governments. The gains of this amendment would be rapid development of local government councils throughout the federation.

#### **4. Conclusion and Recommendations**

What appears to have come out of the recent NFIU guideline is the seeming overreach by the NFIU. Effectively, an agency of the Federal Government like NFIU created by an Act of National Assembly is not competent to use regulatory power for enacting subsidiary legislation that derogates from constitutional powers vested in both State Government and its shared overriding oversight powers on operation of Local Government Councils. The power of NFIU cannot extend to interfering with allocation of revenue or appropriation of same. On the other hand, disbursements of appropriated funds which are forms of financial transactions are legitimate subject of interest and intervention by NFIU in the discharge of its statutory functions. To the extent that the new NFIU guidelines dictates to State and Local Government how funds allocated to them can be warehoused before appropriation as prescribed by the State Houses of Assembly, it is tendentious towards an overreach. The prospect will appear high that the Court if invited to review it, will strike down such offensive provisions. The blue pencil rule is there to cut down an ultra vires legislative instrument, be it substantive or subsidiary. Hence, under the doctrine of covering the field, a federal agency cannot exercise delegated legislative power to override legislation or executive action of the State Government or even Local Government, in that order, where the matter does not fall under exclusive or concurrent list. For successful implementation of NFIU in Nigeria, the work therefore recommends the following: There is need to amend section 162 (3) (4) (6) (7) and (8) of the 1999 Constitution of Nigeria which provided for the financial relationship among the various tiers of government in the Federation, and further created some uncertainty that borders on the financial autonomy of the local government. Furthermore, Nigerian federalism should adopt overlapping authority model of intergovernmental relation in order to ensure balanced fiscal federalism. Under this circumstance, the national, state and local government exists and consciously agree (or are provided with) avenues where and when they have to rely on the assistance or cooperation of the other tier to survive. Again, there is need also to restructure the country by collapsing the present 36 States and 774 local governments into larger regions and provinces. This should be done based on ethnic/tribal consideration. This should be done along constitutional measures in order to encourage these governmental units to develop their own internal revenue sources. Finally, the issue of derivation (resource control) should be addressed more objectively. Nigeria should take good care of the goose that lays the golden egg. Hence, there is need to amend the 1999 Constitution which stipulates that derivation should be 13% and increase it to 25 or 30 %. This will help to improve the perilous living conditions of these communities and impact directly on the lives of the people who bear the adverse effects of oil exploration.

---

<sup>29</sup> Section 7(1) and 162 of the 1999 Constitution of Nigeria.